

208. As in previous years, the Committee has addressed direct requests to certain countries which have not replied to the questions in the report forms on practical application. The Committee notes that, again this year, the majority of the countries in question are developing countries and that certain of them have referred specifically to difficulties of a financial and/or administrative nature which are preventing them from compiling the statistical and other information requested. The Committee is of the opinion that these are also cases in which technical assistance from the International Labour Office, particularly when provided by the multidisciplinary advisory teams, could assist in overcoming the difficulties in question.

Cases of progress

210. In accordance with its usual practice, the Committee has drawn up a list of the cases in which it has been able to **express its satisfaction** at certain measures taken by governments to make the necessary changes in their country's law or practice following comments by the Committee on the degree of conformity between national law or practice and the provisions of a ratified Convention. Details concerning the cases in question are to be found in Part II of this report and cover 46 instances in which measures of this kind have been taken in 36 countries. The full list is as follows:

*List of the cases in which the Committee has been able to express its **satisfaction** at certain measures taken by the governments of the following countries:*

<i>State</i>	<i>Conventions Nos.</i>
Angola	89
Argentina	87
Bahamas	42
Cambodia	29
Canada	160
Colombia	22, 87
Costa Rica	130
Croatia	87
Cyprus	102
El Salvador	105
Estonia	87
Finland	87, 115, 160

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<i>State</i>	<i>Conventions No.</i>
Greece	71
Grenada	16, 58
Italy	81, 118
Lithuania	100
Madagascar	129
Mauritania	22
Mozambique	81
Netherlands	29
New Zealand	11
Niger	87
Pakistan	87
Panama	87
Paraguay	120
Peru	98
Portugal	131
Qatar	81
Romania	87
Saint Lucia	98
Slovakia	11
Swaziland	11, 87, 98
Switzerland	87
Tunisia	77, 150
Turkey	81
United Kingdom	81, 87
<i>Non-metropolitan territory</i>	
United Kingdom: British Virgin Islands	17

211. Thus, the total number of cases in which the Committee has been led to express its satisfaction with the progress achieved following its comments has risen to 2,276 since the Committee began listing them in its reports in 1964.

212. In addition, the Committee has been able to **note with interest** various measures that have been taken following its comments with a view to ensuring a fuller application of ratified Conventions. Details concerning the cases in question are to be found in Part II of this report and in the requests addressed directly to governments

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concerned and cover 159 instances in which measures of this kind have been taken concerning 85 countries. The full list is as follows:

*List of the cases in which the Committee has been able to note with **interest** various measures taken by the governments of the following countries*

<i>State</i>	<i>Conventions Nos.</i>
Algeria	63
Angola	100, 111
Argentina	17, 107, 156
Australia	111, 156
Austria	111
Bangladesh	81
Belgium	111
Bolivia	129
Bosnia and Herzegovina	111
Bulgaria	3, 111
Burkina Faso	150
Canada	87, 111
Cape Verde	98
Chile	111, 156
China	22, 122
China (Hong Kong Special Administrative Region)	122
Colombia	17, 98
Congo	150
Costa Rica	87, 102, 169
Croatia	87, 156
Cuba	81, 100
Cyprus	29, 105
Czech Republic	111, 142, 155
Denmark	69, 87, 98, 100, 111, 129
Egypt	81
El Salvador	29, 107
Estonia	22

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State	Conventions: Nos.
Finland	111, 142, 156, 160
France	100, 111
Germany	100, 150
Ghana	81
Greece	144
Grenada	5
Guatemala	83, 87, 120
Guinea-Bissau	111
Guyana	111
Iceland	100
India	111, 144
Ireland	81
Israel	92, 111
Italy	81
Japan	100
Korea, Republic of	100
Latvia	122
Lebanon	77, 78
Lesotho	111
Lithuania	88, 100
Luxembourg	81
Madagascar	100, 129
Malawi	81
Malaysia	81
Malta	111, 138
Mexico	87, 102, 155, 160
Mozambique	81
Namibia	87
Netherlands	115, 150, 156
Niger	87
Norway	86, 100, 111, 115, 138, 156, 160
Pakistan	87, 105

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<i>State</i>	<i>Conventions Nos.</i>
Panama	81
Paraguay	87, 100
Peru	81
Poland	111
Portugal	122, 144
Qatar	81
Romania	29, 87, 137
Russian Federation	108
Saint Vincent and the Grenadines	8, 81
San Marino	156
Saudi Arabia	29, 81
Slovakia	144
Slovenia	111, 156
Spain	24, 102, 129
Sri Lanka	29, 96
Swaziland	81
Sweden	111, 156, 164
Switzerland	87, 111, 115
Thailand	29, 105, 122
Tunisia	81, 105
Turkey	81, 115
Ukraine	87, 160
United Kingdom	44, 87
Uruguay	103, 111, 150, 156
Venezuela	41, 81
Zambia	150
Zimbabwe	150
<i>Non-metropolitan territories</i>	
France: New Caledonia	129
Netherlands: Netherlands Antilles	81

213. All these cases provide an indication of the efforts made by governments to ensure that their national law and practice are in conformity with the provisions of the ILO Conventions they have ratified.

214. These cases do not, however, as the Committee regularly points out, exhaust the instances in which Conventions and Recommendations have a measurable influence on the law and practice of member States. For example, the Committee has again noted a number of cases this year in which it is clear from the first report on the application of a Convention that new legislative or other measures were adopted shortly before or after ratification.

VI. Submission of Conventions and Recommendations to the competent authorities (article 19, paragraphs 5, 6 and 7, of the Constitution)

215. In accordance with its terms of reference, the Committee this year examined the following information supplied by the governments of member States, pursuant to article 19 of the Constitution of the International Labour Organization:

- (a) information on the steps taken to submit to the competent authorities the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), adopted by the Conference at its 86th Session (June 1998);
- (b) information on the steps taken to submit to the competent authorities the instruments on the worst forms of child labour (Convention No. 182 and Recommendation No. 190), adopted by the Conference at its 87th Session (June 1999);
- (c) additional information on the steps taken to submit to the competent authorities the instruments adopted by the Conference from its 31st Session (1948) to its 85th Session (October 1996) (Conventions Nos. 87 to 181, Recommendations Nos. 83 to 188 and the Protocols); and
- (d) replies to the observations and direct requests made by the Committee at its previous session (November-December 1999).

216. The table in Appendix I to section III of Part Two of this report shows the position of each member State on the basis of the information supplied by the governments with regard to the discharge of the obligation to submit instruments adopted by the Conference to the competent authorities. Appendix II shows the overall situation with regard to the instruments adopted since the 31st Session of the Conference (June 1948). Appendix III contains a summary indicating, where possible, the name of the competent authority and the date of the submission of the instruments adopted by the Conference at its 86th and 87th Sessions (June 1998 and June 1999).

86th Session

217. The submission to the competent authorities of Recommendation No. 189, adopted at the 86th Session of the Conference (June 1998), was to have been made within 12 months or, under exceptional circumstances, within 18 months of the close of the session of the Conference, the final dates for submission being 18 June 1999 and 18 December 1999, respectively. The Committee notes with interest that the following 32 governments, in addition to those mentioned in the previous report, have provided information on the steps taken with a view to the submission of Recommendation No.

189 to the authorities which they consider competent: Australia, Austria, Bahrain, Barbados, Belgium, Burkina Faso, Canada, Chad, Cyprus, Denmark, Estonia, Germany, Greece, Guyana, Hungary, Iceland, India, Indonesia, Italy, Lithuania, Mauritius, Morocco, Namibia, Netherlands, Papua New Guinea, San Marino, Saudi Arabia, Sri Lanka, Ukraine, United Arab Emirates, United Kingdom, Yemen.

87th Session

218. In response to the appeal made by the Director-General to give the highest priority to the ratification of Convention No. 182, certain governments had already provided information for the previous session of the Committee on the steps taken with a view to the submission and ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), adopted on 17 June 1999 at the 87th Session of the Conference. The time limit of 12 months envisaged for the submission to the competent authorities of the instruments adopted in June 1999 came to an end on 17 June 2000, and the time limit of 18 months will come to an end on 17 December 2000. The Committee notes with interest the information on the submission to the competent authorities provided by the 104 following member States: Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Canada, Central African Republic, Chad, Chile, China, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, Germany, Ghana, Greece, Guatemala, Guyana, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Italy, Jamaica, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Malawi, Malaysia, Mali, Malta, Mauritius, Mexico, Republic of Moldova, Mongolia, Namibia, Nepal, Netherlands, Nicaragua, Niger, Norway, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Syrian Arab Republic, Togo, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay, Viet Nam, Yemen, Zimbabwe.

31st to 85th Sessions

219. The Committee welcomes the special efforts made, particularly by the Governments of Benin, Ecuador, Guatemala, Morocco, Papua New Guinea, Swaziland and Yemen, for the submission to the competent authorities of the instruments adopted by the Conference over several sessions.

General aspects

220. The Committee is pleased to note that the submission of instruments adopted by the Conference at its 87th Session, namely Convention No. 182 and Recommendation No. 190 on the worst forms of child labour, 1999, was effected by almost two-thirds of Members and has resulted to date in more than 50 ratifications of Convention No. 182. A number of governments have submitted instruments within the time limits prescribed by

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the Constitution of the Organization and allowed prompt ratification of the Convention, thereby contributing to the promotion of fundamental rights at work. This welcome result shows the usefulness and timeliness of the activities that the Director-General and the Office have conducted in regard to promotion of the worst forms of child labour Convention and other fundamental Conventions.

221. The Committee refers once again to the general considerations that it made at its 69th Session (November-December 1998) on the manner of discharging the constitutional obligations relating to the submission to the competent authorities of the instruments adopted by the Conference. As rightly observed by the Employer and Worker members of the Conference Committee on the Application of Standards during the discussion on the occasion of the 88th Session (May-June 2000), the obligation of submission is a fundamental element of the standards system of the ILO and compliance with this obligation should not create problems in a democracy. The Committee is bound to recall that the principal objective of the Constitution was, and still is, that the instruments adopted by the Conference are brought to the knowledge of the public through their submission to a parliamentary body. Governments have complete freedom as to the nature of the proposals to be made and the action that they consider it appropriate to be taken on the instruments adopted by the Conference.

222. Recent experience shows that when States intend to carry out ratification they comply with the obligation to submit, in regard both to time limits and to form, with the specific objective of completing ratification. This may indicate that some member States have a misconception of submission as having the sole function of initiating the ratification process. The Committee recalls again that the specific purpose of submission – presentation of instruments to the parliamentary body – does not affect the freedom of the competent state bodies to decide on ratification of a particular Convention. Whether or not there is an intention to ratify the Convention, the national authorities and the social partners must conduct a diligent examination of the instruments adopted by the Conference so that the parliamentary bodies are informed regularly of the decisions of the Conference and the public is aware of these instruments. The Committee hopes that the results obtained for the instruments adopted at the 87th Session of the Conference will encourage member States' more effective submission to the parliamentary bodies of the instruments already adopted and of future instruments.

223. Lastly, under the terms of article 23, paragraph 2, of the Constitution, it is of paramount importance for Members to transmit to the representative organizations of employers and workers copies of any communications addressed to the ILO concerning the submission to the competent authorities of instruments adopted by the Conference. This provision is designed to enable occupational organizations to formulate their own observations on the action that has been taken or is to be taken with regard to the instruments in question.

Comments of the Committee and replies from governments

224. As in its previous reports, in section III of Part Two of this report, the Committee makes individual observations on the points that it considers should be brought to the special attention of governments. In addition, requests with a view to

obtaining supplementary information on other points have been addressed directly to a number of countries, which are listed at the end of section III.

225. The Committee wishes once again to emphasize the importance of the communication by governments of the information and documents called for in *points I and II of the questionnaire* at the end of the Memorandum of 1980. The Committee has to be able to examine a summary or a copy of the documents by which the instruments have been submitted to the parliamentary bodies and the proposals made as to the action to be taken on the instruments adopted by the Conference. The Committee emphasizes the fact that the obligation to submit is not completed until the instruments adopted by the Conference have been submitted to parliament and a decision has been taken by the competent authorities with respect to them. This decision and the information on the submission of the instruments to parliament must be communicated to the Office. The Committee trusts that the governments concerned will take the appropriate measures, as requested in the observations and direct requests addressed to them.

Special problems

226. The Committee notes with regret that the governments of the following 28 countries have not provided information indicating that the instruments adopted by the Conference during at least the last seven sessions (from the 80th to the 86th Sessions) have in fact been submitted to the competent authorities: **Afghanistan, Angola, Armenia, Belize, Bolivia, Bosnia and Herzegovina, Cambodia, Cameroon, Central African Republic, Comoros, Congo, Dominica, Guinea-Bissau, Haiti, Honduras, Kazakhstan, Kyrgyzstan, Madagascar, Mali, Saint Lucia, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic, Uzbekistan.** The fact that these countries, as reflected in most of the situations referred to in the observations contained in Part III of this report, have accumulated a long backlog in this regard is cause for deep concern to the Committee. Indeed, there is a danger that some of them may find it very difficult, or even impossible, to bring themselves up to date. Furthermore, neither the legislative authorities nor public opinion in these countries are regularly informed of the existence of new instruments as they are adopted by the Conference, which defeats the real purpose of the obligation of submission as explained in the preceding paragraphs.

227. The nature and scope of the obligation to submit have been recalled in the individual observations made to certain States, taking into account the explanations provided by them in their reports. The Committee firmly hopes that the governments concerned will undertake to submit the instruments adopted at the sessions concerned rapidly and that it will be able to note the progress achieved in this respect in its next report. Finally, the Committee recalls the possibility available to governments to call on the Office for the technical assistance that it is able to provide in order to endeavour to resolve this type of problem, particularly through the multidisciplinary advisory teams.

VII. Instruments chosen for reports under article 19 of the Constitution

228. In accordance with the decisions taken by the Governing Body, governments were requested to supply reports under article 19 of the ILO Constitution on the Night Work (Women) Convention, 1919 (No. 4); the Night Work (Women) Convention (Revised), 1934 (No. 41); the Night Work (Women) Convention (Revised), 1948 (No. 89); and on the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948.

229. A total of 526 reports were requested and 325 received.¹⁰⁵ This represents 61.8 per cent of the reports requested.

230. The Committee notes with regret that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the ILO Constitution has been received from the following 21 countries: Afghanistan, Algeria, Bosnia and Herzegovina, Equatorial Guinea, Fiji, Gambia, Georgia, Grenada, Guinea, Lao People's Democratic Republic, Liberia, Libyan Arab Jamahiriya, Nigeria, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Solomon Islands, Swaziland, The former Yugoslav Republic of Macedonia, Turkmenistan, Uzbekistan.

231. The Committee urges governments once again to provide the reports requested so that its General Surveys can be as comprehensive as possible.

232. Part Three of this report (issued separately as Report III (Part 1B)) contains the General Survey on night work for women. In accordance with the practice followed in previous years, the survey has been prepared on the basis of a preliminary examination by a working party comprising four persons appointed by the Committee from among its members.

* * *

233. Lastly, the Committee would like to express its appreciation for the invaluable assistance again rendered to it by the officials of the Office, whose competence and devotion to duty make it possible for the Committee to accomplish its increasingly voluminous and complex task in a limited period of time.

Geneva, 8 December 2000.

(Signed) Sir William Douglas,
Chairperson

E. Razafindralambo,
Reporter

¹⁰⁵ ILO Report III (Part 1B), ILC, 89th Session, 2001.

Appendix. List of observations made by employers' and workers' organizations

Argentina	
• Congress of Argentinian Workers (CTA)	on Convention No. 87
Benin	
• Confederation of Autonomous Trade Unions of Benin	on Convention No. 105
Bosnia and Herzegovina	
• Independent Trade Union of Workers in "Aluminium" Inc.	on Conventions Nos. 111
• Iron Mine Union of "Ljubija-Prijedor"	111
• Union of Autonomous Trade Unions of Bosnia and Herzegovina	111
Brazil	
• Democratic Federation of Shoe Makers of "Rio Grande do Sul"	on Conventions Nos. 81, 155
• Inter-American Trade Union Institute for Racial Equality (INSPIR)	111
• International Confederation of Free Trade Unions (ICFTU)	29
• Single Confederation of Workers (CUT)	29, 105
• Trade Union of Handlers of São Sebastião (SASS)	155
• Trade Union of Workers in Postal and Telegraphic Telecommunication Corporations and Associated Enterprises, and Telephone Operators, in the State of Rio de Janeiro (SINTTEL-RJ)	148
• Union of Railway Enterprise Workers, Mogiana Area (STEFZM)	155
• Union of Workers in the Marble, Granite and Limestone Industry in the State of Espiritu Santo (SINDIMARMORE)	81, 155
Chile	
• Association of Beneficiaries of Act 19.170 of the State Railway Company	on Conventions Nos. 35, 36, 37, 38
• Association of Civil Servants in the Health Sector (Western Area)	35, 36, 37, 38
• Association of Professionals and Technicians of the University of Chile	35, 36, 37, 38
• Association of Professionals No.1 and No.2 - Public Health Institute of Chile	35, 36, 37, 38
• Association of Public Employees in Injury Insurance	35, 36, 37, 38
• Federation of Employees' Associations of the University of Chile (FENAFUCH)	35, 36, 37, 38
• National Association of Academic Staff of the University of Chile	35, 36, 37, 38
• National Association of Employees of the Directorate of Libraries, Archives and Museums "UNIDAD"	35, 36, 37, 38
• World Federation of Trade Unions (WFTU)	162
Colombia	
• Confederation of Workers of Colombia (CTC)	on Conventions Nos. 87, 98
• General Confederation of Democratic Workers (CGTD)	87, 98
• National Trade Union of Workers of the Agrarian Fund	3
• Single Confederation of Workers of Colombia (CUT)	87, 98
• Trade Union of Public Employees of the SENA (Subdirectorate of Medellín)	95
• Union of Maritime and Inland Water Transport Industry Workers (UNIMAR)	87, 95, 98
• World Federation of Trade Unions (WFTU)	95

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Comoros

- Federation of Autonomous Comoran Workers' Organizations (USATC)

on Conventions Nos.

1, 14, 17, 26, 29, 42, 52, 77, 81, 95,
98, 99, 100, 105

Costa Rica

- Confederation of Workers Rerum Novarum (CTRN)
- Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP)
- International Confederation of Free Trade Unions (ICFTU)
- Trade Union of Employees of the Ministry of Finance (SINDHAC)
- Transport Workers' Union of Costa Rica (SICOTRA)
- World Federation of Trade Unions (WFTU)

on Conventions Nos.

14, 87, 95, 98, 106, 122, 138
87, 98
98
14, 87, 95, 98, 138
14, 87, 95, 98, 138
130

Croatia

- Retired Persons' Trade Union of Croatia (SUH)
- Seafarers' Union of Croatia

on Conventions Nos.

48, 102
147

Cyprus

- Pancyprian Public Employees Trade Union

on Convention No.

151

Ecuador

- National Union of Telephone Operators, Observation and Inspection Staff "17 de Mayo" of the Ecuadorian Telecommunications Institute

on Convention No.

148

Egypt

- Federation of Egyptian Industries

on Conventions Nos.

131, 149

Finland

- Central Organization of Finnish Trade Unions (SAK)
- Commission for Local Authority Employers (KT)
- Confederation of Finnish Industry and Employers (TT)
- Confederation of Unions for Academic Professionals in Finland (AKAVA)
- Employers' Confederation of Service Industries (LTK)
- Finnish Confederation of Salaried Employees (STTK)

on Conventions Nos.

100, 115, 122, 129, 140
100, 122, 142
115
100, 122, 140, 142
115
100, 122

France

- General Confederation of Labour - Force Ouvrière (CGT-FO)
- General Confederation of Labour (CGT)

on Conventions Nos.

87
81

Guatemala

- Confederation of Rural and Urban Workers
- Trade Union Confederation of Guatemala (UNSATRAGUA)

on Conventions Nos.

169
103

India

- International Confederation of Free Trade Unions (ICFTU)
- National Front of Indian Trade Unions (NFITU)

on Conventions Nos.

29
14, 90

Italy

- Italian Confederation of Business Managers (CIDA)
- Italian Confederation of Private Shipowners (CONFITARMA)

on Conventions Nos.

142
22, 71

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Japan	
	on Conventions Nos.
• Federation of Korean Trade Unions (FKTU)	29
• Japan Federation of Prefectural and Municipal Workers' Unions (JICHIREN)	87
• Japan National Hospital Workers' Union (JNHU)	87, 98, 100, 156
• Japanese Trade Union Confederation (JTUC-RENGO)	29, 87, 98, 100
• Korean Confederation of Trade Unions (KCTU)	29
• National Network of Fire Fighters (FFN)	87
• National Union of General Workers (Zenrokyo)	87, 98
• Netherlands Trade Union Confederation (FNV)	29
• Pensioners' Union, Kobe Port Liaison Committee (PU-KPLC)	102
• Telecommunication Workers' Union (TSUSHINROUSO)	29, 156
• Tokyo Zenrodosha Kumiai Labour Union	87, 98
Libyan Arab Jamahiriya	
	on Conventions Nos.
• International Confederation of Free Trade Unions (ICFTU)	95, 111
Madagascar	
	on Conventions Nos.
• "Fivondronan'ny Mpiasa Malagasy (FMM)"	29
• "Sendika Kristianina Malagasy (SEKRIMA)"	29
Mauritania	
	on Convention No.
• Free Confederation of Mauritanian Workers (CLTM)	87
Mexico	
	on Conventions Nos.
• Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)	14, 22, 52, 106, 140
Republic of Moldova	
	on Conventions Nos.
• General Federation of Trade Unions of the Republic of Moldova (GFTURM)	129
• National Confederation of Employers of the Republic of Moldova (NCERM)	87, 122
Myanmar	
	on Convention No.
• International Confederation of Free Trade Unions (ICFTU)	29
Netherlands	
	on Convention No.
• Netherlands Trade Union Confederation (FNV)	98
New Zealand	
	on Conventions Nos.
• New Zealand Council of Trade Unions (NZCTU)	11, 14, 22, 52, 97, 101, 122
• New Zealand Employers' Federation (NZEF)	11, 14, 22, 52, 97, 101, 122
Pakistan	
	on Convention No.
• International Confederation of Free Trade Unions (ICFTU)	29
Paraguay	
	on Conventions Nos.
• Central Confederation of Workers (CUT)	87, 98
• General Union of Workers (CGT)	87, 98
• Trade Union Confederation of Workers of the State of Paraguay (CESITEP)	87, 98

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Peru

- Association of Retirees and Pensioners of the National Ports Enterprise Ltd.
- Trade Union of Fishing Boat Owners of Puerto Supe and Associates (SCPPPSA)
- United Union of Petroleum, Energy, By-Products and Allied Workers of Grau Region

on Conventions Nos.

71

55, 56

87

Poland

- National Trade Union of All-Polish Nurses and Midwives
- Trade Union of Medical Analysis Technicians

on Conventions Nos.

87, 98, 122, 149

87, 98, 122, 149

Portugal

- General Confederation of Portuguese Workers (CGTP-IN)

on Conventions Nos.

6, 95, 122, 131

Qatar

- International Confederation of Arab Trade Unions (ICATU)

on Convention No.

111

Rwanda

- Workers' Trade Union Confederation of Rwanda (CESTRAR)

on Conventions Nos.

87, 100

Saudi Arabia

- International Confederation of Arab Trade Unions (ICATU)

on Convention No.

111

Seychelles

- Association of Seychelles Employers
- Seychelles Federation of Workers' Unions (SEFWU)

on Conventions Nos.

29

29

Slovenia

- Association of Free Trade Unions of Slovenia (AFTUS)
- Employers' Association of Slovenia

on Conventions Nos.

156, 159

122

Spain

- Democratic Confederation of Labour (CDT)
- General Union of Workers (UGT)
- Trade Union Confederation of Workers' Commissions (CC.OO.)

on Conventions Nos.

97, 102, 111, 131, 155

111, 131, 144, 151, 155

14, 24, 77, 78, 97, 100, 106

Sri Lanka

- International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)
- Lanka Jathika Estate Workers' Union (LJEWU)

on Conventions Nos.

87, 98

11, 29, 87, 98, 100

Sudan

- International Confederation of Free Trade Unions (ICFTU)
- World Confederation of Labour (WCL)

on Conventions Nos.

29

29

Sweden

- Swedish Agricultural Workers' Union
- Swedish Association of Local Authorities
- Swedish Employers' Confederation (SAF)
- Swedish Trade Union Confederation (LO)
- Union of Service and Communication (SEKO)

on Conventions Nos.

129

149

176

121, 159

164

Switzerland

- Swiss Federation of Trade Unions (USS/SGB)
- Swiss Union of Arts and Crafts (USAM)
- Union of Swiss Employers (UPS)

on Conventions Nos.

87, 100

87, 100, 115, 132

100, 132

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Thailand

- Employers Confederation of Thailand (ECOT)

on Convention No.
29

Turkey

- Confederation of Progressive Trade Unions of Turkey (DISK)
- Confederation of Turkish Trade Unions (TÜRK-İSİ)
- Turkish Confederation of Employers' Associations (TİSK)

on Conventions Nos.
98
14, 26, 29, 77, 87, 94, 95, 100, 115,
122, 138
14, 29, 77, 87, 94, 95, 100, 115,
122, 138

United Arab Emirates

- International Confederation of Free Trade Unions (ICFTU)

on Conventions Nos.
29, 138

United Kingdom

- Trades Union Congress (TUC)
- UNISON

on Conventions Nos.
87, 100
87, 98

Uruguay

- Inter-Union Assembly of Workers - National Convention of Workers (PIU-CNT)
- Latin-American Confederation of Labour Inspectors (CLIT)

on Conventions Nos.
81, 87, 98, 111, 131, 151, 156
81

PART TWO

Observations concerning particular countries

OBSERVATIONS CONCERNING PARTICULAR COUNTRIES

I. Observations concerning reports on ratified Conventions (article 22 of the Constitution)

A. General observations

Afghanistan

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Armenia

The Committee notes that, for the sixth year in succession, the reports due have not been received. It also notes with regret that the first report due since 1995 on Convention No. 111 has not been received, nor have the first reports due since 1996 on Conventions Nos. 100, 122, 135 and 151, nor the first report due since 1998 on Convention No. 174. The Committee trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, and if necessary requesting appropriate assistance from the Office.

Bolivia

The Committee notes with regret that, for the second year in succession, reports received under article 22 of the Constitution have not been communicated to the organizations of employers and workers, in accordance with article 23, paragraph 2. It expresses the hope that in future the Government will not fail to discharge this obligation under the ILO Constitution.

Bosnia and Herzegovina

The Committee notes with regret that for many years the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to

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supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Botswana

The Committee notes that, for the second year in succession, the reports due have not been received. It also notes that the first reports due since 1999 on Conventions Nos. 29, 87, 95, 98, 100, 105, 111, 138, 144, 151, 173 and 176 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, and if necessary requesting appropriate assistance from the Office.

Burkina Faso

The Committee notes that the first reports due since 1999 on Conventions Nos. 141, 161 and 170 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of these Conventions, in accordance with its constitutional obligations, and if necessary requesting appropriate assistance from the Office.

Central African Republic

The Committee notes that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Cyprus

The Committee notes that the first report due since 1999 on Convention No. 175 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Democratic Republic of the Congo

The Committee notes with regret that, for the fourth year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Equatorial Guinea

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It also notes with regret that the first reports due since 1998 on Conventions Nos. 68 and 92 have not been received. The Committee trusts that the

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Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, and if necessary requesting appropriate assistance from the Office.

Georgia

The Committee notes that the first reports due since 1998 on Convention No. 105 and since 1999 on Convention No. 117 have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of these Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Grenada

The Committee notes with regret that the first report due since 1996 on Convention No. 100 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Kyrgyzstan

The Committee notes that, for the second year in succession, the reports have not been received. It also notes that the first report due since 1995 on Convention No. 133 has not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Lao People's Democratic Republic

The Committee notes that, for the second year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Liberia

The Committee, once again noting the evolution of the national situation, nevertheless notes with regret that the first report due since 1992 on Convention No. 133 has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the report due on the application of this Convention, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Mongolia

The Committee notes with regret that the first report due since 1998 on Convention No. 135 has not been received. It trusts that the Government will not fail in future to

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discharge its obligation to supply the report due on the application of this Convention, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Sao Tome and Principe

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Sierra Leone

The Committee notes that, for the sixth year in succession, the reports due have not been received. While taking note of the national situation, it hopes that appropriate measures will be taken to ensure application of the ratified Conventions as soon as circumstances so permit.

Solomon Islands

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

Somalia

The Committee notes with regret that the reports due have not been received for a number of years. While taking note of the national situation, it hopes that appropriate measures will be taken to ensure application of ratified Conventions as soon as circumstances so permit.

Tajikistan

The Committee notes with regret that, for the second year in succession, reports received under article 22 of the Constitution have not been communicated to the organizations of employers and workers, in accordance with article 23, paragraph 2. It expresses the hope that in future the Government will not fail to discharge this obligation under the ILO Constitution.

United Republic of Tanzania

Zanzibar

The Committee notes with regret that for many years the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary requesting appropriate assistance from the Office.

The former Yugoslav Republic of Macedonia

The Committee notes with regret that, for the third year in succession, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, if necessary, requesting appropriate assistance from the Office.

Turkmenistan

The Committee notes that, for the second year in succession, the reports due have not been received. It also notes that the first reports due since 1999 on Conventions Nos. 29, 87, 98, 100, 105 and 111 have not been received. The Committee trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, and if necessary requesting appropriate assistance from the Office.

Uzbekistan

The Committee notes with regret that, for the fifth year in succession, the reports due have not been received. It also regrets that the first reports due since 1996 on Conventions Nos. 47, 52, 103 and 122 have not been received; nor have the first reports due since 1998 on Conventions Nos. 29 and 100, nor the first reports due since 1999 on Conventions Nos. 98, 105, 111, 135 and 154. The Committee trusts that the Government will not fail in future to discharge its obligation to supply reports on the application of ratified Conventions, in accordance with its constitutional obligations, and if necessary requesting appropriate assistance from the Office.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Algeria, Angola, Antigua and Barbuda, Belarus, Belize, Bolivia, Bulgaria, Burundi, Cameroon, Congo, Côte d'Ivoire, Czech Republic, Djibouti, Dominica, Egypt, Ethiopia, Fiji, Gabon, Georgia, Germany, Greece, Guyana, Haiti, Honduras, India, Islamic Republic of Iran, Iraq, Ireland, Jamaica, Lebanon, Liberia, Libyan Arab Jamahiriyah, Luxembourg, Mauritania, Mongolia, Myanmar, Niger, Nigeria, Papua New Guinea, Paraguay, Saint Lucia, Senegal, Slovakia, Tajikistan, United Republic of Tanzania, United Republic of Tanzania (Tanganyika), Uganda, Viet Nam.*

B. Individual observations

Convention No. 1: Hours of Work (Industry), 1919

Comoros (ratification: 1978)

The Committee notes the Government's report on the application of the Convention. It also notes the observations made by the Confederation of Autonomous Comoran Workers' Organizations (USATC) and the Government's reply.

The USATC indicates that weekly hours of work vary between 42 and 88 and that additional hours are not paid. It adds that no regulations determine the working hours of

taxi drivers. In reply, the Government recognizes that difficulties in ensuring adequate labour inspection prevent it from guaranteeing observance of the statutory working week of 40 hours. It also states that it wishes to consult the social partners on the issue of the working hours of taxi drivers. More generally, the Government envisages amending the national legislation, taking into account the Committee's comments, with a view to bringing it into conformity with the provisions of the ILO Conventions that it has ratified. In this respect, it requests the technical assistance of the ILO.

The Committee hopes that the above difficulties will be overcome and that the Government will be in a position in its next report to provide information on real progress made in implementing national regulations in conformity with the requirements of the Convention. In this respect, it hopes that its previous comments on the following points will be taken into account.

The Committee noted that section 9 of Order No. 54-148/c and section 2 of Order No. 54-90/c authorize extensions of hours of work either by reason of the need to maintain or raise the level of production, or by reason of a shortage of labour. The Committee recalled that *Article 6, paragraph 1(b), of the Convention* provides for temporary exceptions only to enable establishments to deal with exceptional cases of pressure of work. It also noted that, in a number of cases (see in particular sections 6, 7 and 12 of Order No. 54-148/c), the additional hours worked are not paid at an overtime rate of not less than one and one-quarter times the regular rate, as required by *Article 6, paragraph 2*. Finally, it requested the Government to ensure that employers' and workers' organizations are consulted before the adoption of the regulations envisaged in *Article 6*.

Equatorial Guinea (ratification: 1985)

The Committee notes with regret that the Government's report has not been received for the third consecutive year. It must therefore repeat its previous observation which reads as follows:

Further to its previous comments concerning *Article 6 of the Convention*, the Committee notes with satisfaction the provisions of Act No. 2/1990, issuing the general labour regulations, which set out the permanent and temporary exceptions to normal working time that are authorized (section 49). It also notes the provisions of the same Act concerning the exceptions to be allowed in case of accident, actual or threatened, or in case of urgent work, or in case of *force majeure*, in accordance with *Article 3*.

The Committee would be grateful if the Government would provide the text of the regulations implementing section 49 of Act No. 2/1990, which are to be made after consultation with employers' and workers' organizations. It notes in this connection the Government's statement that Act No. 12/1992 of 1 October 1992, respecting trade unions and collective labour relations, opens up prospects for the formation of workers' and employers' organizations which will have a role to play in making regulations and fixing working conditions.

More generally, the Committee asks the Government to provide information on the way in which the Convention is applied, including, for example, extracts of labour inspection reports or statistics, as requested in the report form (Part VI).

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Syrian Arab Republic (ratification: 1960)

The Committee notes the information in the Government's last report that the new draft Labour Code is being reviewed by the Committee for Consultation and Tripartite Dialogue in order to take full account of the Committee's comments on the application of the Convention and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). It trusts that the Government will very shortly be in a position to adopt the amended draft accordingly and that it will not fail to so inform the ILO.

The Committee wishes to recall that for many years it has been drawing the Government's attention to the fact that the provisions of section 117 of the present Labour Code, which provide that "hours of work and pauses must be organized in such a fashion that the presence of the worker at the workplace does not exceed 11 hours a day" are liable to result in abuse, and that these provisions need to be amended so as not to require the presence of the worker at the workplace beyond the limits of normal working hours which, in accordance with *Article 2 of the Convention*, must not exceed eight in the day.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Libyan Arab Jamahiriya, Malta, Paraguay*.

Convention No. 3: Maternity Protection, 1919

Bulgaria (ratification: 1933)

The Committee notes the information provided by the Government in its last report.

Article 4 of the Convention In reply to the Committee's previous comments, the Government states that it has submitted to the National Assembly a draft amendment to the Labour Code to introduce a new paragraph into section 333. Under the terms of this new paragraph, it will be prohibited to dismiss a woman during her maternity leave for any reason, except for that set out in section 328, paragraph 1(1) of the Labour Code (closure of the enterprise). The Committee notes this information with interest. It hopes that the proposed amendment to section 333 of the Labour Code will be adopted in the very near future, thereby ensuring that the national legislation gives full effect to *Article 4* of the Convention, under the terms of which it is prohibited for the employer to dismiss a woman during her maternity leave or at such time that the notice would expire during such absence. The Committee requests the Government to provide a copy of the amendment once it has been adopted.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Latvia, Mauritania*.

Convention No. 4: Night Work (Women), 1919

Requests regarding certain points are being addressed directly to the following States: *Colombia, Cuba, Italy, Lithuania, Nicaragua, Spain*.

* * *

The Committee wishes to recall that its General Survey of this year refers to Conventions Nos. 4, 41 and 89 and its Protocol of 1990. The Committee invites the governments to examine this survey, in particular with respect to the application of Convention No. 4.

Convention No. 5: Minimum Age (Industry), 1919

Guinea (ratification: 1959)

The Committee notes the information sent by the Government in its report. It notes in particular the adoption of Order No. 2791/MTASE/DNTLS/96 of 22 April 1996 concerning child labour. It asks the Government to provide more detailed information on the following points.

The Committee notes the information supplied by the Government to the effect that a collective agreement and Decree 106 PRG 87 of 17 August 1987 establishing the Ports Labour Office will be sent to the Office in due course. The Committee asks the Government to provide copies of the above texts.

The Committee also notes that, according to the Government's report, a draft order setting out the work which may not be entrusted to apprentices and employees under 18 years of age is to be examined when the Labour Legislation Advisory Committee resumes work. In this connection, the Committee draws the Government's attention to the provisions of the above draft order which, in the light of the provisions sent for the Committee's information in the report, appear to offer guarantees which are inferior to those previously established in Order No. 2791/MTASE/DNTLS/96 concerning child labour. The Committee therefore asks the Government to report on progress made in the adoption of this order.

Article 4 of the Convention. The Committee notes that section 361 of the Labour Code provides that labour inspectors may, when inspecting an enterprise or establishment, require the disclosure of all registers or documents which are required to be kept under labour laws or regulations. The Committee notes that the Government intends to send to the Office the register of persons under 16 years of age as soon as possible. It asks the Government to indicate which provisions of the law establish that heads of industrial undertakings must keep a register of all persons under the age of 16 years employed by him, stating the requirements which must be set out in it, and to send the Office a copy of the register.

Part V of the report form. The Committee asks the Government to provide information on the application of the Convention in practice, for instance, extracts of inspection reports and statistics on the employment of young people.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belize, Grenada, Saint Lucia, Saint Vincent and the Grenadines.*

Convention No. 6: Night Work of Young Persons (Industry), 1919

Portugal (ratification: 1932)

The Committee notes the information provided by the Government in its report and the adoption of many decrees and laws. It also notes the observations made by the General Confederation of Portuguese Workers (CGTP-IN) concerning the non-conformity of national legislation with the provisions of the Convention.

Article 2, paragraphs 1 and 2, of the Convention. The Committee notes that section 33 of Legislative Decree No. 409 of 1971, on which it has been commenting for many years, was amended by Act No. 58 of 30 June 1999. Under the terms of the new section 33(1), night work by persons under 16 years of age is prohibited and collective agreements may not reduce the period of night work specified by the law. The Committee notes the information provided by the Government to the effect that the new section 33 no longer allows young persons of 16 or 17 years of age to work at night in industrial enterprises for their vocational training, which was permitted under the former section 33(1) of Legislative Decree No. 409 of 1971.

However, the Committee recalls that, under the terms of *Article 2, paragraph 1*, of the Convention, it is prohibited to employ young persons under 18 years of age during the night in industrial undertakings, other than those in which only members of the same family are employed and in the cases enumerated in *Article 2, paragraph 2*. The Committee requests the Government to indicate the measures which have been taken or are envisaged to bring the legislation into conformity with the Convention on this point.

Section 33(3) of Act No. 58 of 30 June 1999 provides that young persons of 16 years of age and over may be authorized to work at night in specific sectors by collective agreement, except between midnight and 5 o'clock in the morning. The Committee recalls that *Article 2, paragraph 2*, of the Convention allows the employment of young persons over 16 years of age on work which, by reason of the nature of the processes, is required to be carried on continuously day and night in the industries referred to in the Article. While noting the information provided by the Government to the effect that, in general, collective agreements do not make use of this exception, the Committee requests the Government to indicate the sectors in which collective agreements may allow the night work of young persons of 16 years of age and over. It also requests the Government to provide copies of the above collective agreements.

Article 3, paragraph 1. The Committee notes that section 29 of Legislative Decree No. 409 of 1971, on which it has been commenting for many years, was amended by Legislative Decree No. 96/99 of 23 March 1999. Under the terms of the new section 29, night work signifies work performed for a period of at least seven hours and a maximum of 11 hours, including the interval between midnight and 5 o'clock in the morning. Collective agreements establish the duration of night work, in accordance with this provision and, irrespective of whatever may be set out in collective agreements, night work is the period between 8 o'clock in the evening and 7 o'clock in the morning. The Committee notes the information provided by the Government, according to which the amendments to sections 29 and 33 of Legislative Decree No. 409 of 1971 do not modify the points raised by the Committee.

The Committee also notes that, by virtue of section 33(2) of Act No. 58 of 30 June 1999, young persons of 16 years of age may not work at night between 10 o'clock in the evening and 6 o'clock in the morning, or between 11 o'clock in the evening and 7 o'clock in the morning, without prejudice to the provisions of subsections (3) and (4). In this respect, section 33(3) provides that collective agreements may authorize young persons of 16 years of age and above to work at night in specific sectors, except between midnight and 5 o'clock in the morning.

In its comments, the CGTP-IN considers that section 33(2) of Legislative Decree No. 409/71 of 27 September 1971, as amended by Act No. 58 of 30 June 1999, is not in conformity with the definition of night work set out in Convention No. 6. In this respect, the Committee notes the Government's reply to the effect that the national legislation is indeed not in conformity with the Convention. However, the Government indicates that, while admitting that the provisions of the Convention may have been justified at the time of its adoption, they no longer reflect the real situation in the world of work. According to the Government, developments in the organization of work have resulted in greater protection for health and safety, particularly for young workers. The Committee also notes the Government's comments concerning the decision taken by the Governing Body to revise Conventions Nos. 6, 79 and 90.

However, the Committee recalls that, by virtue of *Article 3, paragraph 1*, the term "night" signifies a period of at least 11 consecutive hours, including the interval between 10 o'clock in the evening and 5 o'clock in the morning. The Committee also notes that the amendments made by Act No. 98/99 to Legislative Decree No. 409/71 do not bring the national legislation into conformity with the Convention. The Committee therefore once again requests the Government to take the necessary measures to bring its legislation into conformity with the Convention on this point.

In its previous comments, the Committee had noted that Legislative Decree No. 396/91 of 16 October 1991, respecting work by young persons, and Ministerial Orders Nos. 714/93 and 715/93 of 3 August 1993, relating respectively to the definition of light work and activities which are prohibited for young persons, do not bring the legislation into conformity with the Convention on the two points raised previously. It once again requests the Government to take the necessary measures to bring the legislation into conformity with the Convention.

Senegal (ratification: 1960)

The Committee notes the information supplied by the Government in its report. It notes, in particular, the repeal of Act No. 61-34 of 15 June 1961 by Act No. 97-17 of 1 December 1997 enacting the Labour Code. In this context, the Committee notes that the Government indicates that section L.140 of the Labour Code defines "night" as the period from 10 p.m. to 5 a.m. and that section L.141 of the Labour Code provides that women and young persons shall have a minimum rest period of 11 consecutive hours. Consequently, the Committee presumes that local order No. 3724/IT of 24 June 1954 concerning work of children has been repealed. The Government indicates, however, in its report that it recognizes non-compliance of sections 3 and 7 of local order No. 3724/IT with the provisions of *Article 2 of the Convention*. The Committee is, therefore, bound to repeat the comments it has been making for more than 40 years, namely that section 3 confines the prohibition on night work to young workers and

apprentices, whereas the Convention applies to all young manual and non-manual workers employed in industrial undertakings. The Committee recalls, furthermore, that for more than 30 years it has been asking the Government to take the necessary measures to bring into conformity national legislation, especially order No. 3724/IT of 1954, which allows derogation from the prohibition on night work of young people broader than that authorized by *Article 7* of the Convention.

The Committee notes that the Government undertakes, as it has in the past for more than 30 years, to bring its regulations into line with international instruments. The Committee observes that, to this end, the orders of the Ministry of Labour which must be issued pursuant to the provisions of the Labour Code are still to be drafted. It also notes that a labour commission has already prepared draft texts concerning work of young persons.

The Committee trusts that the Government will take all necessary measures, in the near future, to bring its legislation into conformity with the provisions of the Convention. The Committee encourages the Government to request, as soon as possible, technical assistance from the ILO to find an appropriate solution to the questions raised by the Committee for so many years.

[The Government is asked to report in detail in 2001.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Austria, Cambodia, Latvia, Viet Nam*.

Information supplied by *Chad* and *Lao People's Democratic Republic* in answer to a direct request has been noted by the Committee.

Convention No. 7: Minimum Age (Sea), 1920

A request regarding certain points is being addressed directly to *Saint Vincent and the Grenadines*.

Information supplied by *Bahamas* and *Estonia* in answer to a direct request has been noted by the Committee.

Convention No. 8: Unemployment Indemnity (Shipwreck), 1920

Iraq (ratification: 1966)

Articles 2 and 3 of the Convention. For many years, the Committee has been noting that the provisions of the Labour Code do not provide for the application of these Articles of the Convention and it has therefore been drawing the Government's attention to the need to adopt legislation providing: (a) in accordance with *Article 2* of the Convention, that, in every case of loss or foundering of any vessel, each person employed thereon shall be paid an indemnity against unemployment at the same rate as the wages payable under the contract for the days during which they in fact remain unemployed, although the total indemnity payable to any one seafarer may be limited to two months' wages; and (b) in accordance with *Article 3*, that seafarers shall have the same remedies for recovering the indemnities as they have for recovering arrears of

wages earned. In this regard, the Government states once again in its report that section 150 of the Labour Code provides in a clear manner that, in the absence of an explicit provision in the Labour Code, the provisions of international labour Conventions ratified by Iraq shall apply. It adds that it will endeavour to adopt the necessary legislative measures to dispel any ambiguity in this respect. The Committee notes this information once again. It trusts that, in accordance with the assurances given, the Government will take all the necessary measures to adopt legislation giving full effect to *Articles 2 and 3* and that it will provide copies of it in its next report.

Jamaica (ratification: 1963)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

Article 2 of the Convention. Further to its previous observation, the Committee notes the Government's statement that the 1998 Bill on Merchant Shipping has been submitted to Parliament for discussion. It hopes that the adoption of the Bill will give full effect to this provision of the Convention by eliminating the restrictions in section 157 of the United Kingdom Merchant Shipping Act, 1894 (applicable in Jamaica), which provides that "in all cases of wreck or loss of ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages". The Committee is bound once again to draw the Government's attention to this point, which has been the subject of the Committee's comments for many years, and, therefore, trusts that the above Bill will be adopted in the very near future. It requests the Government to report any progress made in this regard and to supply the text of the new Act as soon as it has been adopted.

Sierra Leone (ratification: 1961)

The Committee notes with regret that for the third consecutive year the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

Article 2 of the Convention. The Committee notes from the information supplied by the Government in its report that the legislation necessary to give effect to the Convention has not yet been adopted. In view of the scant progress made in this regard despite the comments it has been making for many years, the Committee stresses once again that legislative measures should be taken to amend the Merchant Shipping Legislation so as to eliminate the bar to receipt of unemployment indemnity in case of shipwreck where it is proved that a seaman did not exert himself to the utmost to save the ship. The Committee trusts that in its next report the Government will be able to state that the necessary legislation has been adopted to ensure that full effect is given to the Convention.

Solomon Islands (ratification: 1985)

The Committee notes with regret that for the seventh consecutive year the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session, together with the text of the Labour (Seamen) Rules adopted in 1985, which, according to the Government's previous statement, provides for indemnity against unemployment in case of loss or foundering of a ship, without further qualifications, in conformity with this provision of the Convention. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Vanuatu, Papua New Guinea, Poland*.

Convention No. 9: Placing of Seamen, 1920

Cameroon (ratification: 1970)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the Government's report, received in June 1999. In reply to the Committee's previous comments, the Government states that the harmonization of the legislation with *Article 5 of the Convention* is one of its constant concerns. It would appear that the maritime authority and the labour administration have met several times for this purpose. The Committee is therefore bound once again to ask the Government to take the necessary steps to set up committees consisting of an equal number of representatives of shipowners and seamen, as required by *Article 5 of the Convention*, to advise on matters concerning the operation of employment offices for seamen.

Paragraph 10. The Government is also asked to supply any available information, statistical or otherwise, concerning unemployment among seamen and the work of seamen's employment agencies, particularly available data on the activities of the employment offices in Kribi, Limbe and Douala which are relevant to seamen.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 10: Minimum Age (Agriculture), 1921

Requests regarding certain points are being addressed directly to the following States: *Grenada, Saint Vincent and the Grenadines*.

Convention No. 11: Right of Association (Agriculture), 1921

Bangladesh (ratification: 1972)

The Committee takes note of the Government's report.

The Committee recalls that the provisions of the Industrial Relations Ordinance (IRO), 1969, apply only to agricultural workers employed in the organized sectors, namely agricultural farms, such as the tea gardens, sugar mills and other agricultural farms run on a commercial basis, and that agricultural workers including self-employed persons, are not covered by the IRO. As a result, the existing labour law is only applicable to 17 per cent of the working force in the agricultural sector.

In its previous observation, the Committee had requested the Government to modify the existing legislation concerning agricultural workers to ensure they enjoy the same rights of association and combination as industrial workers, and to repeal any statutory or other provisions restricting such rights.

The Committee recalls that under *Article 1 of the Convention*, all those engaged in agriculture should enjoy the same rights of association and combination as industrial

workers, which is particularly important in countries where a large proportion of the workforce is engaged in agriculture, and that ratifying members undertake to "repeal any statutory or other provision restricting such rights in the case of those engaged in agriculture".

The Government indicates in its report that workers not covered by the IRO enjoy the right of association through cooperative societies under the Cooperative Societies Act, 1940, for improving welfare, economic and social development. The Government adds that the Land Reform Ordinance, 1984, reformed the law relating to land tenure, holding and transfer with the aim of, *inter alia*, ensuring a better relationship between landowners and *bargadars* (sharecroppers), section 12(1) of that Ordinance, for instance, sets the sharing percentages of *barga* lands produce between owners and *bargadars*. The Government states that due to the nature of agriculture in the country (disorganized farmers; landholding divided into numerous small units), formulating a legal basis of a trade union for agricultural workers is practically impossible.

The Committee takes note of this information and, reminding the Government that it may avail itself of the technical assistance of the Office, asks it once again to take the necessary legislative measures to ensure that all those engaged in agriculture enjoy the same rights of association and combination as industrial workers, and to keep it informed in its next report.

[The Government is asked to report in detail in 2001.]

Burundi (ratification: 1963)

The Committee notes that the Government's report does not reply to its previous comment. It must therefore repeat its previous observation which read as follows:

It recalls that its previous comments concerned the necessity to amend Legislative Decree No. 190 of 25 August 1967 on rural associations which imposes on agricultural workers certain obligations with regard to compulsory membership, compulsory contribution and the provision of agricultural or livestock products, all these obligations being contrary to the Convention.

The Committee had taken due note of the Government's statement in its report for 1999, according to which the Decree in question was never applied since its promulgation. The Government also indicated that it was urgent to expressly repeal this Decree. In this regard, the Committee requests the Government to forward it the repealing text as soon as it is adopted.

[The Government is asked to report in detail in 2001.]

Czech Republic (ratification: 1993)

The Committee notes with interest that paragraph 2 of Law No. 83 of 1990 respecting the association of citizens, as amended by Law No. 300 of 19 July 1990 (section 1) guarantees the right of association to all citizens and that, according to the Government's report on the application of the Convention, the rights of agricultural workers are regulated by the same laws and regulations as other persons' rights.

The Committee asks the Government to indicate in its next report if foreign agricultural workers legally residing in the country are granted trade union rights.

[The Government is asked to report in detail in 2001.]

India (ratification: 1923)

The Committee notes the information provided in the Government's report.

In its previous comments, the Committee recalled the observations which had been supplied by the National Labour Organisation (NLO), Ahmedabad, annexed to a Government's previous report, which had mentioned the practical difficulties confronting trade union activity in agriculture, owing to the nature of work in this sector, as well as the information supplied by the Government that in practice only 9.2 per cent of the workforce in agriculture is unionized and that the vast majority of the poor agricultural workers is not organized.

The Committee would once again recall the important conclusions reached by the National Commission on Rural Labour (NCRL) which was mandated to study all aspects of the conditions of work relating to this sector and to examine the legal and administrative measures taken in order to organize rural labour, to suggest modification in the existing laws and to propose new legislation. The NCRL, which submitted its report to the Government in 1991, had defined rural labour as "a person who is living and working in the rural area and engaged in agricultural and/or non-agricultural activities requiring manual labour, getting wage or remuneration partly or wholly, in cash or in kind or both during the year, or such own account workers who are not usually hiring in labourers but are part of the petty production system in rural areas". This definition includes workers who do wage-paid manual labour, small and marginal farmers who may be supplementing their income by earning wages, tenants, sharecroppers and artisans. In 1987-88, there were 150 million persons in India falling within this definition which accounted roughly for 60 per cent of the total rural workforce in the country. The NCRL had recommended a central legislation for agricultural labourers (who constitute the most vulnerable category of workers due to their dependence on wage employment) providing for security of employment, prescribed hours of work, payment of prescribed wages and machinery for the settlement of disputes. The NCRL had also recommended a provision in the said legislation for enabling formation of trade unions for agricultural labourers in order to carry on their activities under applicable laws. In fact the NCRL had stressed the utmost importance of organizing the rural workers, in particular agricultural labourers, to enable them to obtain the required bargaining power, to realize what is their due and legitimate interest, to ensure them protection against exploitation of all kinds and to make them partners in the development process to improve their conditions of work. Some efforts had been made by the National Labour Institute which undertook consciousness-raising programmes for rural workers to build their own mass organizations and to make them aware of their basic rights and needs.

The Committee stresses once again that the present Convention applies to all those engaged in agriculture. The Committee expresses its concern that while agriculture is not expressly excluded from the scope of the Trade Union Act (TUA), 1926, as amended, it is not expressly included either, as the definitions given in the Act can be interpreted as excluding workers employed in small agricultural farms from its application. For example, the term "workmen" is defined as all persons employed in trade or industry and references to "trade dispute" (section 2(g)) seems to apply to industrial agriculture and agricultural farms run on a commercial basis but it does not appear to include the bulk of agricultural workers like self-employed farmers, sharecroppers and smallholders.

While noting the information provided by the Government concerning the central level unions/associations of agricultural workers, the Committee would ask the Government once again to supply information concerning their membership, particularly as concerns self-employed workers engaged in agriculture. It also requests information on any legislative and other measures taken or contemplated, as envisaged in the Government's previous report, to ensure that those engaged in agriculture enjoy the same rights of association and combination as industrial workers, and to repeal any statutory or other provisions restricting such rights.

[The Government is asked to report in detail in 2001.]

New Zealand (ratification: 1938)

The Committee notes the information provided in the Government's report, as well as the comments made by the New Zealand Council of Trade Unions (NZCTU) and the New Zealand Employers' Federation.

In its previous comments, the Committee had noted the concerns raised by the NZCTU that the fall in union membership and in the negotiation of collective employment contracts, in their opinion due to the impact of the 1991 Employment Contracts Act, had particularly affected the agricultural sector. The Committee had requested the Government to keep it informed of any practical information or statistics illustrating the effects of the Act on agricultural workers in practice particularly given the often-dispersed nature of the sector.

The Committee notes from the Government's report that the Employment Relations Act repeals the 1991 Act and is intended to improve support for freedom of association by promoting collective bargaining and providing an underlying obligation on all parties in the employment relationship to deal with each other in good faith. The Committee further notes the latest NZCTU comments that the Employment Relations Act addresses a number of the relevant issues and that it also applies to agricultural workers.

The Committee notes with satisfaction the adoption of the Employment Relations Act which came into effect on 2 October 2000 and which, according to the Government will create an environment more conducive to the development of collective relationships, while protecting the interests of employees covered by individual employment agreements.

Pakistan (ratification: 1923)

The Committee takes note of the Government's report. It regrets, however, that the Government limits itself to a declaration that it is now trying to bring big holdings of agricultural land under the purview of the labour laws, but that it has not replied to the Committee's previous comments.

The Committee therefore, once again, stresses that the present Convention applies to all those engaged in agriculture. While agriculture is not expressly excluded from the Industrial Relations Ordinance (IRO) 1969, it is not expressly included and the definitions given in the Ordinance can be interpreted as excluding small agricultural workers like self-employed farmers, sharecroppers, tenants and smallholders, from its application. In fact "employer" is defined in relation to an establishment which means

"any office, firm, industrial unit, undertaking, shop or premises in which workmen are employed for the purpose of carrying on an industry, i.e. any business, trade, manufacture, calling, service, employment or occupation" (section 2). This restrictive definition does not include small agricultural holdings which do not run an establishment or farmers working on their own or with their family.

In the light of the foregoing situation, the Committee considers that there is an important gap in the legislation and the Government should take appropriate measures to modify existing statutory laws or enact new laws in relation to workers engaged in agriculture and their right to establish organizations, like industrial workers, in order to comply with its obligation to respect and fully apply this Convention.

The Committee once again requests the Government to provide in its next report detailed information concerning the number of trade unions and associations of agricultural workers. It also requests information on legislative and other measures taken or contemplated to ensure specifically that those engaged in agriculture enjoy the same rights of association and combination as industrial workers, and to repeal any statutory or other provisions restricting such rights.

Rwanda (ratification: 1962)

The Committee notes the Government's report.

Article 1 of the Convention (all those engaged in agriculture have the same rights of association and combination as industrial workers). The Committee recalls that the Labour Code of 1967, section 6 of which guarantees the right of association, continues to exclude agricultural workers from its scope (section 186). The Committee underlines again that, under the terms of *Article 1* of the Convention, the Government must secure to all those engaged in agriculture the same rights of association and combination as to industrial workers.

The Committee notes that the Government indicates in its report that the revision procedure of the Labour Code, which was transmitted to the Transitional National Assembly in April 1999 for examination and adoption, still has to go through two stages (the examination of the draft by the Constitutional Court and its promulgation by the President of the Republic after its adoption). The revision procedure is intended to explicitly include agricultural workers in the scope of the Labour Code and thereby guarantee them the right of association (sections 2(2) and 77 of the draft Labour Code).

The Committee notes with great concern that it has been requesting the Government since 1969 to secure to those engaged in agriculture the same rights of association and combination as industrial workers. It expresses consequently the strong hope that the Government will take all the necessary measures in the very near future to bring its legislation into conformity with the Convention.

[The Government is asked to report in detail in 2001.]

Slovakia (ratification: 1993)

The Committee notes with satisfaction that paragraph 2 of Law No. 83 of 1990 respecting the association of citizens, as amended by Law No. 300 of 19 July 1990 (section 1) guarantees the right of association to all citizens and that, according to the

Government's report on the application of the Convention, the rights of agricultural workers are regulated by the same laws and regulations as other persons' rights.

Sri Lanka (ratification: 1952)

The Committee notes the information provided in the Government's report, as well as the observations made by the Lanka Jathika Estate Workers' Union (LJEWU).

In its previous comments, the Committee noted the important gap in the legislation in the fact that self-employed persons engaged in agriculture were not covered by the Trade Union Ordinance (T.U.O.), 1935, as amended, and requested the Government to take appropriate measures to modify existing laws or enact new ones in relation to such workers in the agricultural sector and their right to establish organizations, like industrial workers.

The LJEWU indicates in its latest observations that the majority of the agricultural workers are small farmers operating fragmented smallholdings, sharecroppers and landless labourers. There is no existing legislation covering these agricultural workers who cannot be registered either under the T.U.O. or the Societies Ordinance. The LJEWU states that the nearest concept to rural workers' organizations that they experience in their country is the grouping of rural workers under the cooperative system. They add that the Department of Cooperative Development, in collaboration with other government ministries and departments concerned, is playing a major role in organizing these rural workers. While this is not an ideal system, the LJEWU believes that it has the potential to be transformed into the ideal workers' organization. At present, however, the cooperatives are undermined by state patronage and state control. They therefore strongly advocate that these cooperative societies be transformed into real workers' organizations without any interference or outside control in their society affairs.

In its latest report, the Government indicates that it would be difficult to make provisions for organizations of self-employed, whether urban or rural. Their work relations, organization and objectives are different from industrial workers, thus any attempts to bring their organizations into line with organizations of industrial workers would be futile. They could organize themselves for furtherance of their occupations. The Government considers that organizations in line with cooperatives and societies could be established for the furtherance of their objectives, as stated by the LJEWU. It further indicates that such organizations have been set up, however, they are different from trade unions. According to the Government, however, in terms of protection and furtherance of the objectives of the persons involved, such organizations would be more effective.

The Committee takes due note of this information. It recalls that *Article 1 of the Convention* provides that all those occupied in agriculture should have the same rights of association as industrial workers. This provision does not mean, however, that agricultural workers must necessarily be covered by the same provisions applicable to industrial workers in respect of the right to organize for the furtherance and defence of their interests, but rather that this right is duly and equally guaranteed for those occupied in agriculture as for industrial workers. The Committee would draw the Government's attention to the availability of ILO technical assistance for reviewing the national legislation and facilitating the search for appropriate solutions to ensure this right. It requests the Government to indicate in its next report the measures taken or envisaged to

amend relevant legislation or enact new legislation ensuring that those engaged in agriculture enjoy the same rights of association and combination, including the right to strike, as industrial workers. This should also apply to those who are not in the plantation sector.

Swaziland (ratification: 1978)

The Committee notes with satisfaction the provisions of the *Industrial Relations Act, 2000*, which no longer exclude the undertakings employing less than ten persons for the clearing, felling or stripping of trees and for the cultivation of land, as did the *Industrial Relations Act, 1996*. The Committee notes with interest that the legislation of 1996 was repealed by section 113 of the *Industrial Relations Act, 2000*. The new legislation applies equally to agriculture and industrial workers and provides for a better application of Convention No. 11.

The Committee is also raising a number of points in a request addressed directly to the Government.

Syrian Arab Republic (ratification: 1960)

The Committee notes the information provided by the Government in its last report.

The Committee notes that section 160 of Act No. 136 issuing the Agricultural Labour Code of 1958 prohibits strikes in the agricultural sector and that section 262 of the same Code provides that a person who instigates or participates in a strike or a lockout is liable to a sentence of imprisonment of three months to one year. In this regard, the Committee considers that rural workers should be able to benefit from the right to strike, which is one of the essential means through which workers and their organizations may promote and defend their economic and social interests; provisions denying this right to workers in the agricultural sector are contrary to the principles of freedom of association. The Committee therefore requests the Government to repeal or amend sections 160 and 262 of Act No. 136 issuing the Agricultural Labour Code of 1958, in order to bring its legislation into conformity with the Convention.

[The Government is asked to report in detail in 2001.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Gabon, Swaziland, Tajikistan*.

Information supplied by *Mauritius* in answer to a direct request has been noted by the Committee.

Convention No. 12: Workmen's Compensation (Agriculture), 1921

Colombia (ratification: 1933)

In reply to the Committee's previous comments concerning the extent of the coverage of the general system for employment injury compensation (*Sistema General de riesgos Profesionales* (SGRP)) to wage earners in the agricultural sector, the Government states that enterprises in the agricultural industry are affiliated to the SGRP

and that the implementation of this system is gradual in both the urban and rural sectors. The Government hopes that its next report on the application of the Convention will show positive developments and even significant progress in the application of the Convention.

The Committee notes this information and the statistics provided by the Government. It notes with interest the increase in the number of workers affiliated to the SGRP (6,185,191 insured persons in 1998, compared with 4,320,038 in 1996). It nevertheless hopes that the Government will indicate in its next report the measures taken to enable all the agricultural wage earners covered by the Convention to be entitled to the benefits provided by the SGRP in the event of employment injury. In this respect, it requests the Government to continue providing information on the number of wage earners affiliated to the SGRP and, in particular, statistics on the number of insured wage earners in the agricultural sector in relation to the total number of wage earners working in this sector.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Croatia, Haiti, Malaysia* (Peninsular Malaysia, Sarawak).

Convention No. 13: White Lead (Painting), 1921

Algeria (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes that Executive Decree No. 96-209 of 5 June 1996 fixes the composition and functioning of the National Occupational Safety and Health Council. The responsibilities of this Council include the production of an annual report on matters of occupational health and safety and occupational medicine. The Committee trusts that the Government will take advantage of the creation of this Council to promote the adoption of the regulations giving effect to the provisions of the Convention. In this regard, the Committee recalls that, in its comments since 1965, it has drawn the Government's attention to the fact that there are no specific provisions in force giving effect to the Convention. The Committee also recalls that, since the Government's report of 1989, in which it announced the adoption of Act No. 88.07 of 26 January 1988 on Occupational Health and Safety and Occupational Medicine, the Government had committed itself to adopting implementing texts with a view to giving effect to the provisions of this Convention, among others. In its last report, the Government recalled what it had already stated in 1995 with regard to the priority which it was giving to other fundamental texts owing to the necessities arising from the social and economic reforms introduced after 1989.

The Committee hopes that the necessary measures will be taken in the very near future to ensure application of *Article 1 of the Convention* (prohibition of the use of white lead and sulphate of lead in the internal painting of buildings), *Article 2* (regulation of the use of white lead in artistic painting), *Article 3* (prohibition of the employment of males under 18 years of age and of all females in any painting work involving the use of white lead) and *Article 5* (regulation of the use of white lead in painting work for which its use is not prohibited). As regards the establishment of statistics on the rate of morbidity and mortality due to lead poisoning, the Committee notes the Government's information to the effect that the National Social Insurance Scheme has been apprised of the question of statistics laid down in *Article 7* with a view to the implementation of this Article.

The Committee requests the Government to indicate any progress made in this area and to provide a copy of the relevant text as soon as it has been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 14: Weekly Rest (Industry), 1921

Costa Rica (ratification: 1984)

The Committee notes the Government's report and the information supplied in reply to its previous comments. It has also noted the observations made by the Transport Workers' Union of Costa Rica (SICOTRA), the Trade Union of Employees of the Ministry of Finance (SINDHAC) and the Confederation of Workers Rerum Novarum (CTRN) of which copies have been transmitted to the Government.

The Committee recalls that its previous comments related to section 152 of the Labour Code under which work is permitted on the weekly rest day, with the consent of the parties, provided that the work is not heavy, unhealthy or dangerous and is carried out in agricultural or stock-raising establishments, or industrial undertakings which require continuity of work due to the nature of the needs which they satisfy or for an obvious public or social interest. Section 152 further provides that a worker shall receive double pay for work performed on a rest day. The Committee requested the Government to indicate whether any provisions exist to ensure that a worker employed in an industrial undertaking will be granted a compensatory rest period, regardless of any cash compensation. In its reply the Government indicates that any individual or collective agreement, or any custom must comply with the terms of article 59 of the Constitution of Costa Rica which provides that all workers have the right to a rest day after six consecutive days of work. Referring also to section 66 of the Labour Code which provides that the employer must take into account the relevant laws, decrees, conventions and agreements in preparing the internal labour regulation, and section 67 of the Code which provides that all regulations must receive prior approval by the Ministry of Labour, the Government indicates that the model internal labour regulations for undertakings prepared by the Directorate of Legal Affairs provides to all workers the right to a compulsory rest day after each week or six consecutive days' work (section 24). On this subject, it supplies extracts of collective agreements providing this right to a weekly rest day. Finally, it indicates that in cases where work is performed on a rest day, pursuant to the abovementioned section 152, the employer has full latitude to grant a compensatory rest period.

SICOTRA, SINDHAC and CTRN indicate in their respective communications that section 152 of the Labour Code is not complied with in a number of undertakings that they cite. They add that it is customary for these undertakings not to comply with labour standards in general, despite the action they have been ordered to take by the competent authorities, which therefore seems inadequate.

In view of the information supplied by the Government, the Committee requests the latter to envisage amending section 152 of the Labour Code and to provide, regardless of any cash compensation, rest periods in compensation for any suspensions or diminutions made for industrial workers. This amendment will bring national

legislation into full conformity with the provisions of *Article 5 of the Convention*. The Committee also requests the Government to submit in future reports of the inspection services and any available statistics that could provide information on the manner in which the Convention is applied in practice, as requested in *Part V of the report form*.

Turkey (ratification: 1946)

The Committee notes the Government's report for the period ending July 2000. It has also noted the observations made by the Turkish Confederation of Employers' Associations (TISK) and the Turkish Confederation of Trade Unions (TÜRK-İŞ).

The Committee notes that TÜRK-İŞ once again alleges inadequate monitoring of the application of the Convention because of the low number of inspections which, furthermore, do not always cover certain categories of workers such as domestic workers and illegal workers. It notes that the Government merely indicates that the inspection services take appropriate measures when a contravention is noted.

The Committee again requests the Government to supply more detailed information on the practical application of the Convention and to provide, in accordance with *Part V of the report form*, available extracts from the reports of the inspection services and, if such statistics are available, information on the number of employed persons covered by the relevant legislation, and the number and nature of contraventions reported.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Bahrain, Comoros, Czech Republic, Haiti, Iraq, Kyrgyzstan, Malaysia (Sarawak), New Zealand, Solomon Islands, Spain, Viet Nam*.

Information supplied by *Algeria, Bahamas and Burkina Faso* in answer to a direct request has been noted by the Committee.

**Convention No. 16: Medical Examination of
Young Persons (Sea), 1921**

Grenada (ratification: 1979)

The Committee notes with satisfaction that, under section 34 of Act No. 14 of 1999 on employment, the employment of a person under the age of 18 years on a vessel is conditioned on the production of a medical certificate attesting fitness for such work, signed by a registered medical practitioner, and that such medical examination shall take place at least once every year at the expense of the employer.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Croatia, Saint Vincent and the Grenadines, Slovenia, Yemen*.

Information supplied by *Azerbaijan, Seychelles and United Kingdom* in answer to a direct request has been noted by the Committee.

Convention No. 17: Workmen's Compensation (Accidents), 1925*Colombia (ratification: 1933)*

The Committee notes the information supplied by the Government regarding the general compensation system for employment injury established under Decree No. 1295 of 22 June 1994, as well as the statistical data relative to the numbers affiliated to the system. It also notes with interest the details supplied by the Government in reply to its comments on the application of *Articles 8, 9 and 10 of the Convention*. However, the Committee wishes to draw the Government's attention to and receive information on the following points.

Article 2(1) of the Convention. The Committee notes with interest, from the statistics supplied by the Government, that the number of workers affiliated to the general system for employment injury is increasing, from 4,320,038 members in 1996 to 6,185,191 members in 1998. In this regard the Committee requests the Government to communicate, on the one hand, information on the measures taken to ensure that all employers conform with section 4(e) of Decree No. 1295 cited above, in the practice of affiliation of their workers and, on the other hand, to continue to communicate statistical information on the number of workers affiliated to the general system for employment injury compared to the total number of salaried persons, both in the private and the public sector. Furthermore, the Committee again requests the Government to supply detailed information on the implementation of section 4(e) of Decree No. 1295, under which employers who do not affiliate their workers to the system shall be responsible for the benefits guaranteed by the above Decree in cases of occupational accidents.

Article 5. In reply to the earlier comments of the Committee regarding payment of compensation in the form of a lump sum where the worker suffers a definitive decrease in his or her capacity for work of between 5 and 50 per cent, the Government indicates that the legislation does not provide for the adoption of measures to ensure that the above compensation will be properly utilized. The Committee recalls in this respect that, under this provision of the Convention, compensation payable in cases of accidents where permanent incapacity results shall be paid in the form of periodical payments; they may only be paid wholly or partially in the form of a lump sum if the competent authority is satisfied that it will be properly utilized. The Committee lays all the more stress on this point since the legislation authorizes payment in the form of a lump sum for decreases in the capacity for work of up to 50 per cent, a decrease which could result in a substantial loss in earning capacity. Under these circumstances, the Committee hopes that the Government will indicate in its next report the measures taken or envisaged to guarantee the full application of this provision of the Convention.

Article 11. 1. In its earlier comments, the Committee had recalled the need to take measures to ensure in all circumstances the payment of compensation to victims of employment injuries and their dependants and to guarantee payment in the event of the insolvency of the employer, in view of the fact that, under section 4(e) of Decree No. 1295, where the employer has not affiliated his workers to the general system for employment injury, he remains responsible for the payment of their benefits. The Government indicates in this regard that, under the Labour Code, claims arising from wages, social benefits and other compensation are accorded a preferential status. While noting this information, the Committee considers that the preferential status allowed to

these claims is not alone sufficient to ensure full application of this provision of the Convention, especially where the employer is responsible for the long-term payment of benefits (disability or survivor's benefits). It consequently requests the Government to indicate in its next report the measures taken to guarantee full application of this provision of the Convention.

2. In reply to earlier comments by the Committee, the Government indicates that the Banking Supervisory Authority exercises financial control over the insurance companies authorized to operate in the employment injury insurance branch. Moreover, the Guarantee Fund for Financial Institutions (FOGAFIN) guarantees the payment of benefits to these workers in the event of the insolvency of the insurance companies. The Committee notes this information. It requests the Government to communicate additional information in its next reports on the implementation of the FOGAFIN guarantee, indicating in particular whether the pertinent regulation provided under section 83 of Decree No. 1295 has been adopted and, if so, supplying a copy thereof. Please also specify the manner in which medical benefits are guaranteed in the event of insolvency of insurance companies.

Comoros (ratification: 1978)

The Committee notes the information supplied by the Government in its latest report. It has also noted the comments transmitted by the Union of independent trade union of Comoros workers (USATC) as well as the reply given by the Government to these comments.

Article 2 of the Convention. In its comments, the USATC notes the difficulties of applying the Convention in practice. The trade union complains that the Social Insurance Fund is inefficient and that there is no service for registering workers with it which, in practice, results in many wage earners not being declared and therefore not covered by the Fund. The Government states that the Fund's inefficiency is due essentially to problems of communication between Anjouan, the headquarters of the Fund, and Moroni, the capital of Comoros. It hopes that solutions will be found to remedy this situation. The Committee notes all this information. It expresses the hope that the Government will be able in the near future to take all the necessary measures to improve the functioning of the Fund so that, in practice, the benefits provided for workers' compensation under domestic legislation will be paid by the Fund to all workers, employees and apprentices employed by enterprises, undertakings or establishments, *public or private*, in accordance with this provision of the Convention. The Committee requests the Government to supply information on any progress made in this regard. It also requests the Government to specify the manner in which the Convention is applied in practice for workers who are not registered with the Social Insurance Fund.

Part V of the report form. In its previous comments, the Committee requested the Government to supply information, including statistics, on the application of the Convention in practice. On this matter, the Government indicates in its report that it intends to reorganize and strengthen the national system of statistics and information on the labour market, if possible with the assistance of the ILO. The Committee notes this information. It hopes that the Government's next report will contain the information required under *Part V of the report form*.

Iraq (ratification: 1960)

The Committee notes with regret that the report supplied by the Government repeats word for word the report provided in 1993. It trusts, in these conditions, that the Government will not fail to provide detailed information on the following points, which have been raised in its comments for many years.

Article 2 of the Convention. In its previous comments, the Committee requested the Government to indicate the categories of workers who may benefit under section 112 of the Labour Code of 1987, which provides for the application to uninsured workers of the provisions on employment accidents of Act No. 39 of 1971 respecting workers' retirement and social security. The Committee wished in particular to be informed whether this section only concerns workers whom the employer has omitted to insure, even though they are covered by Act No. 39 of 1971, or whether it also covers workers who cannot be insured because they do not come within the scope of the social security system.

In this respect, the Committee noted Instruction No. 3130 of 12 February 1989 respecting the compensation of uninsured workers in the event of employment accidents. It also noted the Government's statement that all workers are covered by the protection, irrespective of whether they are insured, including workers whom the employer has omitted to insure. In view of the fact that, by virtue of section 3, the application of Act No. 39 of 1971 to all the workers covered by the Labour Code will be progressive, the Committee once again requests the Government to indicate whether section 112 of the Labour Code, as well as the above Instruction, also apply to workers who cannot yet be insured under the terms of the above Act, and particularly those working in enterprises employing fewer than five workers.

Article 5. For a number of years, the Committee has been pointing out to the Government that the national legislation does not appear, in accordance with this provision of the Convention, to ensure the proper utilization of the compensation paid in the form of a lump sum to the victim of an employment accident causing permanent incapacity of less than 35 per cent. It recalls that, in its previous report, the Government stated that the beneficiaries in question receive the compensation and at the same time keep their job and the whole of their wage, but that the Government did not indicate the provisions by virtue of which the workers concerned keep their job and their wage. In its 1992 observation, the Committee therefore requested the Government to supply further information on this subject.

In its report, the Government refers to section 36(5) of the Labour Code of 1987, by virtue of which a contract of employment shall be terminated "when the worker has become incapacitated to the extent of 75 per cent or more and is unfit to work, as substantiated by an official medical certificate". According to the Government, this means that a contract of employment cannot be terminated in cases where the worker suffers from a rate of permanent incapacity which is below 75 per cent. While noting this information, the Committee notes that this provision does not appear to prevent a contract of employment being terminated in the case of workers who are incapacitated to an extent that is less than 75 per cent on grounds other than incapacity referred to in this section of the Labour Code. It may be deduced from the above that the maintenance in employment of victims of employment accidents resulting in a rate of permanent incapacity of under 35 per cent, referred to by the Government, does not provide

sufficient grounds for dispensing the competent authority from ascertaining the proper utilization of the lump sum paid to such victims by way of compensation. In these conditions, the Committee is bound once again to hope that the Government will take all the necessary measures to ensure observance of the Convention in this respect.

Malaysia

Peninsular Malaysia (ratification: 1961)

Article 2 of the Convention. In its previous comments, the Committee noted that the Employees' Social Security Act of 1969 provided for a wage ceiling of RM2,000 for compulsory coverage for both manual and non-manual workers. The Government pointed out in this connection that in practice the system covers many workers who are above this income limit in that, for one thing, these employees may subscribe to the scheme on a voluntary basis in agreement with their employer and, for another, a worker who has joined the scheme continues to be covered even if his wage subsequently exceeds the above ceiling. The Committee recalls in this connection that, although *Article 2(d)* of the Convention does allow the exemption of non-manual workers whose remuneration exceeds a certain limit, manual workers must be covered by the compulsory insurance scheme, regardless of income level. It therefore expresses the hope that the Government will take the necessary measures to amend the Social Security Act to ensure that this provision of the Convention is fully applied.

Panama (ratification: 1958)

The Committee notes the information supplied by the Government in its last report as well as the full statistical data contained in the Social Insurance Fund statistics bulletin for 1996.

Article 5 of the Convention (in conjunction with Article 2, paragraph 1). In reply to the Committee's previous comments on the need to amend the provisions of sections 306 and 311 of the Labour Code in order to provide for the payment of compensation in the form of periodical payments without limit of time in the event of an occupational accident resulting in permanent incapacity or death, the Government indicates that social security legislation concerning compensation for occupational injuries provides, in the contingency cited, a payment in compliance with this provision of the Convention. While noting this information, the Committee recalls that, pursuant to section 305 of the Labour Code, compensation for occupational injury for workers who are not covered by the compulsory social security scheme shall be governed by the provisions of the Labour Code (articles 304 to 325). In order to appreciate fully the manner in which effect is given to this provision of the Convention by the occupational injury compensation scheme of the Social Security Fund, the Committee would be grateful if the Government would provide statistical information on the number of employees actually covered by this scheme as compared with the total number of employees. In this regard, it recalls that pursuant to *Article 2, paragraph 1*, of the Convention, all workmen, employees and apprentices employed by any enterprise, undertaking or establishment of whatsoever nature, whether public or private, shall be covered. The Committee also expresses the hope that when the Labour Code is next revised, in order to avoid any ambiguity the Government will have no difficulty in aligning sections 306 and 311 of the Code on the

relevant provisions of the social security legislation concerning compensation for occupational injury.

Article 7. In its previous comments, the Committee emphasized that neither the Labour Code nor social security legislation concerning compensation for occupational injury (Decree No. 68 of 31 March 1970) contains a provision for granting supplementary compensation to the victims of industrial accidents whose condition requires the constant help of another person. The Government indicates in this regard in its report that the Social Security Fund grants victims suffering from permanent total incapacity a monthly pension corresponding to 60 per cent of their previous salary. The Government adds that the level of this pension is higher than that paid in the event of permanent total incapacity under the Labour Code (40 per cent) and that it can therefore be deemed that this rate of 60 per cent includes a supplementary compensation which is granted automatically without being restricted to the periods during which the victim requires the assistance of another person. The Committee notes this information, however, it does not consider in the present case that there are grounds for comparing the rate of compensation paid to a victim suffering from permanent total incapacity by virtue of social security legislation with that paid by virtue of the Labour Code. In fact, the purpose of *Article 7* of the Convention is to provide certain of these victims with supplementary compensation when their condition requires the constant help of another person in order to provide them with the means of bearing the financial burden entailed in such help. But, in the specific case of these victims, social security legislation does not provide any supplementary compensation. The Committee therefore hopes that the Government will be able to re-examine this matter and take the necessary measures to give effect to this provision of the Convention. In this regard, it recalls that in its report provided in 1975 the Government mentioned a Bill intended to supplement legislation with a provision providing the supplementary compensation in question.

Saint Lucia (ratification: 1980)

The Committee notes with regret that once again the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

Article 8 of the Convention. The Committee notes that Regulations No. 37 of 1984 do not, as set out in this provision of the Convention, provide for the provision of additional compensation to victims of accidents who suffer incapacity and require the constant help of another person. The Committee therefore hopes that the Government will take the necessary steps to give effect to this provision of the Convention.

Articles 9 and 10. In its previous comments, the Committee drew the Government's attention to the fact that, contrary to this provision of the Convention, section 52(1) of the National Insurance Act No. 10 of 1978 limits to a prescribed amount the right to medical assistance and the provision of artificial limbs. In view of the fact that the Regulations issued under the Act do not appear to contain provisions in this connection, the Committee hopes that the Government will take the necessary steps to secure the application of these Articles of the Convention, which do not fix any maximum amount as regards such benefits.

The Committee also requests the Government to indicate whether the medical treatment set out under section 52(1) of Act No. 10 of 1978 also covers pharmaceutical assistance and the supply, repair and renewal of artificial limbs, in accordance with these provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sierra Leone (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

Article 5 of the Convention. For many years the Committee has been drawing the Government's attention to the fact that sections 6, 7 and 8 of the Workmen's Compensation Ordinance 1954, as amended in 1969, provide for periodic payments for injury benefit, which, although equivalent to the full amount of wages received prior to the accident, are paid only for a limited number of months, whereas under *Article 5 of the Convention*, payment shall be made throughout the contingency.

The Government states in its report that the final draft of the New Labour Legislation, which will provide for periodic payment of benefit in cases of work injury throughout the period of disability, is expected to be completed shortly. The Committee notes this information. It hopes that the process of enactment will be completed soon, and that the Government will supply a copy of the legislation once it is enacted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Suriname (ratification: 1976)

Article 7 of the Convention. In reply to the Committee's previous comments, the Government states that the activities of the interdepartmental Committee have not yet led to amendment of the Labour Accidents Act (No. 145 of 1947). Provisions concerning additional payment would be part of the social programme of structural adjustment mentioned in the last report. The Government adds in this respect that neither the structural adjustment programme nor the social security programme were successfully completed. The Committee notes this information. It cannot but reiterate the hope that measures will be taken in the very near future in order to amend the Labour Accident Act so as to include a provision ensuring additional compensation in cases where the injury results in incapacity of such a nature that the injured workman must have the constant help of another person.

United Republic of Tanzania (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

1. *Article 5 of the Convention.* In previous observations, the Committee had noted that Chapter 263 of the Workmen's Compensation Ordinance made provision for payment in the form of a lump sum in the event of death or permanent incapacity, whereas *Article 5* requires that compensation be paid in the form of periodic payment. Under this *Article of the Convention*, lump sums may be paid only with adequate supervision from the appropriate authorities. In reply to these observations, the Government had expressed its intent, since 1988, to adopt "Consolidated Social Security Legislation". In its last report, the Government explains that the matter is still being followed up by the National Provident Fund and experts from the International Social Security Association, in collaboration with the International Labour Office. The Committee notes this information. It again urges the

Government to take all necessary measures to give full effect to the requirements of the Convention in the very near future.

2. The Committee requests information on the application of the Convention, including any relevant statistics, in accordance with Part V of the report form.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

United Kingdom (ratification: 1949)

Article 9 of the Convention. In reply to earlier comments by the Committee concerning contribution by victims of industrial accidents towards the costs of pharmaceutical products prescribed outside hospitalization, the Government once again indicates that the provisions of the legislation (*National Health Service Act*) regarding reimbursement of pharmaceutical expenses are fair to the extent that they target assistance towards those persons in the greatest financial difficulties. The Government remains convinced that the victims of occupational accidents in this category will be adequately protected by the abovementioned legislation. It further undertakes to ensure that over the course of the next three years increases in cost sharing will not exceed the inflation rate.

The Committee notes this information. It reminds the Government that any provision providing for a contribution by the victim of an occupational accident in the cost of prescribed pharmaceutical products is counter to *Article 9* of the Convention. The aim of this provision is to prevent the financial consequences derived from the occupational injury being borne by the worker. In this connection information previously communicated by the Government shows that, firstly, victims of occupational injuries are not required to share in the costs of prescribed pharmaceutical products when they are in a hospital or when their revenues are beneath a certain limit and, secondly, many categories of insured persons are exempt from cost sharing in respect of pharmaceutical products, irrespective of their level of income. Taking these exemptions into account, the Committee still considers that the Government should be able to include all victims of occupational accidents, irrespective of their income level, within the category of insured persons exempt from cost sharing such that pharmaceutical assistance dispensed outside hospital is provided free of charge to all victims of industrial accidents. The Committee trusts that the Government will re-examine this question and take the measures necessary to ensure full implementation of the Convention on this point.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: Argentina, Bulgaria, Cape Verde, Central African Republic, Greece, Haiti, Lebanon, Philippines, Sao Tome and Principe, United Republic of Tanzania.

**Convention No. 18: Workmen's Compensation
(Occupational Diseases), 1925**

Central African Republic (ratification: 1960)

1. Since the Convention came into force for the Central African Republic, the Committee has been indicating that the schedule of occupational diseases annexed to

Ordinance No. 59.60 of 20 April 1959 does not give effect to the Convention. It has therefore drawn the Government's attention to the need to amend the above schedule, firstly by eliminating the limitative nature of the list of *pathological manifestations* which may be caused by lead and mercury poisoning and, secondly, by adding, among the kinds of work which may lead to anthrax infection, the operations of "loading and unloading or transport of merchandise" in general, in accordance with *Article 2 of the Convention*. The Committee recalls in this respect that already in its 1980 report the Government referred to the adoption of a draft decree prepared following a direct contacts mission between a representative of the Director-General and the competent national services with a view to bringing the legislation into conformity with the Convention. The Committee notes with regret that the latest information provided by the Government in 1995 and 1998 does not indicate that any progress has been made in the adoption of the above draft decree. In these conditions, the Committee is bound once again to urge the Government to take the necessary measures to amend the schedule of occupational diseases annexed to Ordinance No. 59.60 so as to give effect to this Convention, which came into force for the Central African Republic nearly 40 years ago.

2. The Committee hopes that in future reports the Government will provide general information on the manner in which the Convention is applied in practice, as well as the statistical information requested under *Part V of the report form*.

[The Government is asked to report in detail in 2001.]

Sao Tome and Principe (ratification: 1982)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

With reference to its previous comments, the Committee notes that no progress has been made to supplement existing legislation in order to include a detailed list of occupational diseases and related work, in accordance with *Article 2 of the Convention*. The Government states in its report, furthermore, that the Social Security Institute is awaiting publication by the Ministry of Health of lists of occupational diseases in order to allocate compensation. In these circumstances and in view of the importance of the matter, the Committee can only stress once again to the Government that the necessary measures should be taken in the very near future to adopt a list of occupational diseases including at least those set forth in the Schedule appended to *Article 2 of the Convention* – diseases which shall be recognized as such in the event that they are contracted in the circumstances set out in the Schedule.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Tunisia*.

Information supplied by *Colombia* and *Nicaragua* in answer to a direct request has been noted by the Committee.

**Convention No. 19: Equality of Treatment
(Accident Compensation), 1925***Central African Republic* (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Government indicates in its report received in 1998 that no new provisions which could affect the application of the Convention have been adopted. It therefore refers to the report sent in 1997. Under these circumstances, the Committee must once again draw the Government's attention to its previous observation, which read as follows:

With reference to the comments which it has made for many years, the Committee has noted the information provided by the Government according to which the Employment Department envisages making the necessary amendments to bring its legislation into conformity with the Convention as part of the overall programme to review legislative and regulatory texts on labour-related matters. The Committee is obliged once again to remind the Government of the need to supplement section 28 of Act No. 65-66 of 24 June 1965 on workmen's compensation for accidents so as to guarantee for the dependents (survivors) of a worker who was a national of a State bound by the Convention, who were not resident in the Central African Republic at the time the victim died and continue not to be resident there, the benefit accruing from the survivors' pension paid under this legislation. The Committee trusts that the amendments will be adopted in the very near future and it wishes to remind the Government of the possibility of seeking technical assistance from the ILO.

*Malaysia**Peninsular Malaysia* (ratification: 1957)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation, which read as follows:

The Committee notes the Government's report and the discussion which took place at the 1998 Conference Committee on Malaysia's application of Article 6, paragraph 1(b), of the Migration for Employment Convention (Revised), 1949 (No. 97), raising similar problems to those considered under this Convention.

Article 1, paragraph 1, of the Convention. In its previous comment, the Committee drew the Government's attention to the fact that the transfer of foreign workers, working in the private sector, from the Employee's Social Security Scheme (ESS) to the Workmen's Compensation Scheme was not in conformity with this provision of the Convention. A review of the two schemes had in fact shown that the level of benefits in case of industrial accident provided under the ESS was substantially higher than that provided under the Workmen's Compensation Scheme. In this respect the Committee notes with interest that the Government has now reported that it is envisaging reviewing the present situation regarding the coverage of foreign workers under the ESS and that it is proposing amendments to the Social Security Act of 1969 in this regard. The Committee hopes that in its next report the Government will be able to indicate the progress made in amending the Social Security Act in order to ensure that foreign workers will receive the same workmen's compensation benefits as those paid to nationals in conformity with this provision of the Convention. Please supply copies of the proposals made or the amended law, if adopted, in the next report.

The Committee hopes that the Government will make every effort to take the necessary steps in the near future.

Sarawak (ratification: 1964)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation, which read as follows:

The Committee notes the Government's report and the discussion which took place at the 1998 Conference Committee on Malaysia's application of Article 6, paragraph 1(b), of the Migration for Employment Convention (Revised), 1949 (No. 97), raising similar problems to those considered under this Convention.

Article 1, paragraph 1, of the Convention. In its previous comment, the Committee drew the Government's attention to the fact that the transfer of foreign workers, working in the private sector, from the Employee's Social Security Scheme (ESS) to the Workmen's Compensation Scheme was not in conformity with this provision of the Convention. A review of the two schemes had in fact shown that the level of benefits in case of industrial accident provided under the ESS was substantially higher than that provided under the Workmen's Compensation Scheme. In this respect the Committee notes with interest that the Government has now reported that it is envisaging reviewing the present situation regarding the coverage of foreign workers under the ESS and that it is proposing amendments to the Social Security Act of 1969 in this regard. The Committee hopes that in its next report the Government will be able to indicate the progress made in amending the Social Security Act in order to ensure that foreign workers will receive the same workmen's compensation benefits as those paid to nationals in conformity with this provision of the Convention. Please supply copies of the proposals made or the amended law, if adopted, in the next report.

The Committee hopes that the Government will make every effort to take the necessary steps in the near future.

Syrian Arab Republic (ratification: 1960)

Article 1, paragraph 2, of the Convention. In its previous comments, the Committee drew the Government's attention to the need to amend section 94 of the Social Insurance Code, which makes payment of benefits abroad conditional on the beneficiary's country of residence abroad, giving the same treatment to Syrian beneficiaries. In its latest report, the Government indicates that the draft decree amending section 94 of the Social Insurance Code was transmitted in 1998 to the Council of Ministers for promulgation, without success. The Ministry of Social Affairs and Labour, in cooperation with the Public Social Security Institution and the Commission for Consultation and Social Dialogue, is currently examining all comments concerning the Social Insurance Code and preparing a draft legislative decree designed to amend the Code in the light of the Committee of Experts' comments. The Committee notes this information. It trusts that the Government will not fail to take all necessary measures for the purpose of amending section 94 of the Social Insurance Code so as to ensure payment of accident compensation abroad to the nationals of any State which has ratified the Convention, whatever be their new place of residence and irrespective of the conclusion of reciprocal agreements. The Committee also refers to the comments it has made under Article 5 of Convention No. 118.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Djibouti, Philippines, Saint Lucia, Saint Vincent and the Grenadines, Slovakia.*

Information supplied by *Burundi* in answer to a direct request has been noted by the Committee.

Convention No. 22: Seamen's Articles of Agreement, 1926

Colombia (ratification: 1933)

The Committee notes with satisfaction from the Government's report that the resolution of the General Maritime Directorate of 15 June 1995 modified resolutions Nos. 0591 of 7 September 1982 and 004 of 7 January 1995 and provides that the seafarer's discharge book no longer contains "any statement as to the quality of the seaman's work or as to his wages" (*Article 5, paragraph 2, of the Convention*).

Liberia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the Government's statement in its report that the Committee's comments have been referred to the Bureau of Maritime Affairs with instructions that the commission should review the provisions of the maritime laws and regulations with the aim of having them conform with the provisions of the Convention. The Committee hopes that the necessary measures will be taken to apply the Convention in law and in practice and that the Government will provide full particulars on any progress achieved, taking into consideration the Committee's comments since 1995 on *Article 3, paragraph 4, Article 9, paragraph 2, Article 13 and Article 14, paragraph 2, of the Convention*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritania (ratification: 1963)

Further to its previous comments, the Committee notes with satisfaction that pursuant to article 302 of Act No. 95-009 of 31 January 1995 issuing the Merchant Marine Code, a seafarer has the right at all times to obtain from the master a separate certificate as to the quality of his work or a certificate indicating the status of discharge of his contractual obligations. This provision gives effect to *Article 14, paragraph 2, of the Convention*.

Mexico (ratification: 1934)

The Committee notes the information in the Government's report and recalls its previous comments on the application of the Convention, in particular regarding the formalities in completing the articles and the modalities for terminating the agreement. The Committee also takes note of the comments of the *Confederacion de Camaras Industriales de los Estados Unidos Mexicanos*, according to which the provisions of

section 209 III of the Federal Labour Act provide additional protection to seafarers by not allowing termination of an agreement for an indefinite period in a foreign port.

Termination of agreement

In its previous comments the Committee has addressed the problem of legislation prohibiting termination of an agreement for an indefinite period in a foreign port. The right is specifically guaranteed in *Article 9, paragraph 1, of the Convention*. While recognizing that a prohibition on terminating articles of agreement in a foreign port could be viewed as a form of protection, in particular against seafarers being abandoned or otherwise stranded abroad, the Committee recalls that this right to give notice and terminate an agreement for an indefinite period is expressly set forth in the Convention. In this respect, if the period of notice and formalities of termination are respected, the seafarer's motivation for so doing, which the Government questioned in its report, would not affect the legality of the act. Similarly, with regard to the Government's concern that the employer could evade his repatriation obligations by terminating the agreement abroad, the employer's responsibility for repatriation would be determined according to applicable national and international instruments, including the Repatriation of Seafarers Convention (Revised), 1987 (No. 166), ratified by Mexico.

Formalities and safeguards in completing the articles

Article 3, paragraph 6. The Committee notes that the Government considers the prohibition on termination abroad of an agreement for an indefinite period as part of the further formalities and safeguards intended to protect the interests of the shipowner and the seafarer. However, the Committee notes that the "further formalities and safeguards" set forth in this Article refer to the "completion of the agreement", and not to other forms of protection. Under no circumstances could this permissive clause be understood to invalidate rights expressly conferred under the Convention.

The Committee renews its request for the Government to bring the aforementioned provisions of the Federal Labour Act into conformity with the requirements of the Convention and to indicate the measures taken in its next report.

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to report in detail in 2003.]

Pakistan (ratification: 1932)

The Committee notes the information in the Government's report and that the Merchant Shipping Bill 1998 (now Ordinance 2000) is presently with the Law and Justice Division.

The Committee recalls the terms of its previous substantive observation in 1997 concerning the application of various provisions of the Convention, in particular *Articles 1, 5 and 14(2)*, and notes the statement in the Government's current report that the revised draft of this instrument would take into account the provisions of the Convention.

The Committee requests the Government to keep it informed of the progress of this text and to forward a final copy when it is enacted.

[The Government is asked to report in detail in 2002.]

Panama (ratification: 1970)

The Committee notes the information in the Government's report and in particular Law Decree No. 8 of 26 February 1998 – Regulations in respect of maritime labour at sea and on waterways.

With regard to the application of substantive provisions of the Convention, in particular the scope of application; formalities and safeguards in completing the Articles; jurisdiction over the agreement; records of sea service; shipboard information as to conditions of employment; and the seafarer claiming his discharge, the Committee is addressing a direct request to the Government.

Portugal (ratification: 1983)

Since 1986 the Government has referred in successive reports to the preparation of draft Regulations for Maritime Labour Contracts, which were to be adopted shortly. The Committee notes from the Government's most recent report that the draft legal regime has now been drawn up and is currently in the process of consultation with the social partners. It further notes that this legislation is intended to implement, *inter alia*, the provisions of the following Articles of the Convention: *Article 9(1)* (notice for termination of an agreement for an indefinite period); *Article 13* (conditions under which the seafarer can claim discharge); and *Article 14(1)* (recording of discharge in the service document and the crew list) regarding individual employment contracts in the merchant marine.

The Committee hopes that this will be concluded in the near future and that the Government will provide information on all the provisions adopted with a view to giving effect to the Convention.

[The Government is asked to report in detail in 2003.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belize, China, Colombia, Croatia, Estonia, Iraq, Mauritania, Mexico, Myanmar, New Zealand, Nicaragua, Panama, Poland.*

Information supplied by *Italy* and *Tunisia* in answer to a direct request has been noted by the Committee.

Convention No. 23: Repatriation of Seamen, 1926

Requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Croatia, Cyprus, Estonia, Iraq, Kyrgyzstan, Panama, Philippines, Poland, Portugal, Tajikistan, Ukraine.*

Information supplied by *New Zealand* in answer to a direct request has been noted by the Committee.

Convention No. 24: Sickness Insurance (Industry), 1927*Djibouti* (ratification: 1978)

The Committee notes the Government's report and the additional information provided.

In response to the Committee's previous comments, the Government confirms that the Social Protection Body (OPS), created in 1997, is responsible for covering medical benefits, but cash benefits remain the responsibility of the employer. The sickness insurance scheme is to be re-examined in the light of the Convention in the context of the review of the labour legislation which the Government plans to undertake with assistance from the Office. The Committee notes this information. It recalls that the sickness benefits payable under *Article 3 of the Convention*, read in conjunction with *Article 1*, to an insured person unable to work by reason of the abnormal state of his bodily or mental health, must be financed from a *system of compulsory sickness insurance* and shall not be borne directly by the employer. In these circumstances, it hopes that the Government will be able to take the necessary measures to ensure that sickness benefit can be paid to all workers covered by the Convention as part of a sickness insurance scheme, in accordance with the provisions of the Convention. The Committee asks the Government to provide a copy of any legislation adopted to this effect and of any texts regulating the provision of medical benefits by the OPS in the event of illness of insured persons, in accordance with *Article 4* of the Convention.

Haiti (ratification: 1955)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

Further to previous comments, the Government states in its report that an Office for Work Injury, Sickness and Maternity (OFATMA) had been created to establish a social security regime, but that its success to date has been limited due to socio-economic problems in the country. However, the Government is in the process of taking measures to improve the operation of the OFATMA. The Committee notes this information. It hopes that the Government's next report will contain information on the progress made toward the adoption of a sickness insurance scheme which will conform to the requirements of the Convention. The Committee suggests that the Government request the International Labour Office to resume technical assistance.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Bulgaria, Hungary, Spain*.

Convention No. 25: Sickness Insurance (Agriculture), 1927*Haiti* (ratification: 1955)

The Committee notes that the Government's report has not been received. It must therefore once again refer to the comments made under Convention No. 24. The

Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 26: Minimum Wage-Fixing Machinery, 1928

Myanmar (ratification: 1954)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes that the Government's report contains no reply on some of the matters raised in its previous observation. The Committee recalls the sections concerning the payment of wages in the report of the Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29).

Article 1, paragraph 1, of the Convention, in conjunction with Article 4. The Committee has noted from the previous report of the Government that the extension of the coverage relating to minimum wage fixing will be delayed for a while awaiting the enactment of the new labour law. It has also observed that, according to the report of the above Commission of Inquiry (paragraphs 473 to 475 and paragraph 512), local people in irrigation projects are denied remuneration and compensation, and are paid only in exceptional circumstances and then below market rates. The Committee again urges the Government to indicate the manner in which a minimum wage rate is applicable to local people in irrigation projects; also to state, in accordance with *Article 4* of the Convention, the measures taken or contemplated, including supervision, inspection and sanctions, so as to ensure: (i) that the employers and workers concerned are informed of these rates in cases where they are applicable; and (ii) that a worker to whom the minimum rates are applicable and who has been paid at less than these rates shall be entitled to recover, by appropriate legal means, the amount by which he or she has been underpaid.

Article 1, paragraph 2, in conjunction with Article 3. The Committee requests the Government once more to inform it to what extent the employers' and workers' organizations are involved in the fixing, revision and extension of the minimum wage. It also asks the Government to provide a copy of the new labour law as soon as it is adopted.

Part V of the report form. The Committee requests the Government to communicate extracts from the reports of the inspection services and on any other relevant data of the application of the Convention in practice.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Turkey (ratification: 1975)

The Committee notes the information provided by the Government in its report, as well as the comments made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employer Associations (TİSK).

The Committee observes, however, that the Government's report provides no answers to the questions raised in its previous comments. The Committee is therefore bound to repeat its previous observation, which read as follows:

1. The Committee notes that the report of the Government was only received in March 1999, thus after the Committee's session in 1998. The Committee takes note of the indication provided by the Government in this report according to which although the term

"home work" is not defined and thus not specifically regulated in the Labour Act, it is assumed that there exists a contract of employment between an employer and an employee working at home and engaged in manufacture and commerce that falls under the scope of the Labour Act and the Regulation on Minimum Wage. The Government also states that the Ministry of Labour and Social Security is empowered in section 6, paragraph (III), of the said Act to decide which works other than those enumerated in the same section are to be classified as industrial or commercial. The Committee therefore trusts that the next report of the Government will state that the legislation has been amended to specifically include "home work" within the works enumerated in the section of the Labour Act referred to.

2. The Committee also notes the information provided by the Government that there are difficulties in supervising home work, that work is recently initiated on home work with a view to determine its practical dimensions and that social partners have been contacted for this purpose. The Committee trusts that the Government will make every effort to ensure in the very near future that the employers and workers concerned are informed of the minimum rates of wages in force, and that wages are not paid at less than these rates in cases where they are applicable (*Article 4 of the Convention*). Thus, the Committee hopes that the Government will be in a position to supply information with its next report on the organization and working of inspection in relation to home workers (*Part III of the report form*).

3. The Committee also notes the information supplied by the Government according to which:

— since 1987 minimum wages are fixed in shorter spans than the two-year term provided by section 33 of the Labour Act No. 1475, from 1 January 1999, minimum wages are fixed on calendar year basis with six-monthly increases;

— in 1995-96 the Minimum Wage Board concluded that it would be desirable to establish a tripartite commission to study the methods and principles to be applied for fixing the minimum wages, and the adaptation of the relevant regulation in the light of the results of the studies of this commission;

— programmes for 1996 and 1997 foresaw the identification of methods to be applied for fixing the minimum wages and the problems in the existing structures, as well as their remedies, requiring preparations for new arrangements;

— since 1998 several meetings with the participation of social partners have been held within the context of the studies to modify the regulations for fixing the minimum wages and to consider the required amendments together with the proposals of the TISK.

The Committee recalls that the TISK referred to this issue in the comments received in 1998, the content of which was summarized in the Committee's previous observation. The Committee notes that the comments of the TISK attached to the Government's latest report, reiterate in substance the content of the previous one. The Committee requests the Government to report on any progress achieved in relation to the above meetings and on the follow-up of the comments of the TISK.

4. The TÜRK-İŞ states that the home working system is the most common form of evasion of the protective labour legislation. In this respect the TÜRK-İŞ reiterates that the scope of the Turkish minimum wage legislation should be extended to encompass the above categories of "homeworking trades". The TÜRK-İŞ also refers to the application of *Article 4* of the Convention and states that the supervisory system is not working properly because the number of inspectors is insufficient to control the increasing number of small workplaces and clandestine employment, without effective action of the Government in order to strengthen the supervisory mechanism.

The Committee requests the Government to communicate its observations on the comments made by the TÜRK-İŞ

The Committee will analyse in detail the comments made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employers' Associations (TİSK) together with the Government's reply to them in its next report.

[The Government is asked to report in detail in 2001.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Democratic Republic of the Congo, Grenada, Guinea-Bissau, Mauritius, Nigeria, Sierra Leone*

Convention No. 27: Marking of Weight (Packages Transported by Vessels), 1929

Requests regarding certain points are being addressed directly to the following States: *Czech Republic, Denmark, Estonia, France, Papua New Guinea, Slovakia, Slovenia*

Convention No. 29: Forced Labour, 1930

General observation

Further to paragraphs 72-81 of its General Report, the Committee requests all governments to include in their next reports under the Convention information on measures taken or contemplated to prevent, suppress and punish trafficking in persons for the purpose of exploitation. Having regard to *Article 1, paragraph 1, and Article 25 of the Convention*, the Committee is seeking in particular information on the following aspects of law and practice:

- (1) Provisions of national law aimed at the punishment of:
 - (a) the exaction of forced or compulsory labour;
 - (b) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (reproduced in paragraph 73 of the General Report in Part One of this report);
 - (c) the exploiters of the prostitution of others;
- (2) measures taken to ensure that the penal provisions referred to under (1) are strictly enforced against those responsible for the forced labour of legal or illegal migrants, inter alia in sweatshops, prostitution, domestic service and agriculture; in particular, measures required in practice for court proceedings to be initiated and completed, including:
 - (a) measures designed to encourage the victims to turn to the authorities, such as:
 - (i) permission to stay in the country at least for the duration of court proceedings, and possibly permanently;

- (ii) efficient protection of victims willing to testify and of their families from reprisals by the exploiters both in the country of destination and the country of origin of the victim, before, during and after any court proceedings, and beyond the duration of any prison term that might be imposed on the exploiter; and the participation of the Government in any forms of intergovernmental cooperation set up for this purpose;
- (iii) measures designed to inform victims and potential victims of trafficking of measures under (i) and (ii), with due regard to any barriers of language and circumstances of physical confinement of victims;
- (b) measures designed to strengthen the active investigation of organized crime with regard to trafficking in persons, the exploitation of the prostitution of others, and the running of sweatshops, including:
 - (i) the provision of adequate material and human resources to law enforcement agencies;
 - (ii) the specific training of law enforcement officers, including those working in immigration control, labour inspection and vice squads, to address the problems of trafficking in persons in a manner conducive to the arrest of the exploiters rather than of the victims;
 - (iii) international cooperation between law enforcement agencies with a view to preventing and combating the trafficking in persons;
- (c) cooperation with employers' and workers' organizations as well as non-governmental organizations engaged in the protection of human rights and the fight against the trafficking in persons, with regard to matters considered under (2)(a) and (b)(ii);
- (3) any difficulties encountered by the authorities in seeking to prevent or suppress the exaction of forced labour to which legal and illegal migrants may be subjected in practice, and measures taken or contemplated to overcome these difficulties.

Brazil (ratification: 1957)

Information on forced labour practices

1. The Committee notes the comments supplied by the Single Central Organization of Workers (CUT) and the National Confederation of Agricultural Workers (CONTAG), of 29 November 1999, that despite the measures taken by the Government, especially those regarding inspection, workers are still routinely subject to slave labour or degrading labour.

Measures taken to ensure respect for the prohibition of forced labour

A. Remedial, promotional and preventative actions

2. With reference to the comments from CUT and COMTAG, the Government has, in its detailed reply dated 14 August 2000, acknowledged that despite laws to protect rural workers, there are still in many areas a large number of workers who, with their families, are subjected to degrading working conditions and debt bondage. The Government indicated that it is tackling the problem on a number of fronts.

Remedial actions

3. There is collaboration between the Labour Inspection Service in the Ministry of Labour with the Special Mobile Control Group which is the operational arm of GERTRAF (the Executive Group on the Prevention of Forced Labour), the rural land commissions and rural unions to identify situations of forced labour. Complaints can be made to the Labour Inspection Service by the press, trade unions, human rights bodies and the Rural Commissions among others, which then results in action taken by the Special Mobile Control Group. The Government reports that this combined action is achieving significant results through rapid and transparent processing of all complaints. The report also refers to an increase in numbers of persons employed in the Labour Inspection Service which in 1999 employed 1,000 employment law specialists, 19 engineers and 17 employment doctors.

4. The Government statistics indicate that in 1999, a total of 639 workers were freed through the actions of the Special Mobile Control Group. With respect to this figure, the Committee notes that, according to Anti-Slavery International, this total exceeds the entire number freed in the three previous years. The Government statistics also indicate that there is further improvement and that, in the first quarter of this year, 284 workers were freed and they were paid sums as wages in arrears and their contracts were terminated.

5. The Committee welcomes these improvements and encourages the Government to continue to improve further given the extent and seriousness of the problem.

Promotional measures

6. The Government report indicates that the Labour Inspection Service continues to expand and strengthen rural inspection through regional labour offices, directing control action at areas where workers are recruited, in order to warn and educate employers concerning the correct way of employing labour. The Government states that it is providing new equipment to give greater speed in mobilizing control teams. There is also improvement in the recording and summarizing of data to allow comparative analysis. Lectures and seminars are being held on slave and degrading labour, so as to enlighten leading professionals and the public at large of its serious and adverse effects. Further the press publishes the results of the joint action of the Labour Inspection Service, the Federal Prosecution Service and the Federal Police in relation to the proceedings which are in progress.

Preventative measures

7. The Government report indicates that the Labour Inspection Service and the Public Employment Department in the Ministry of Labour are preparing "terms of reference" for proposals for encouraging training and career guidance for workers released from slave labour. These proposals also include the creation of partnerships with state bodies to prevent removal of workers from their place of origin and for job creation. The Government states that these initiatives, conceived as "action to assist workers fleeing rural violence" was included in the "Programme for the Eradication of Slave and Degrading Labour" for the year 2001, under the "Pluri-annual Plan-PPA" for 2001-03.

8. Also on the preventative front, the Government reports that the Ministry of Labour and Employment has held meetings with representatives of teachers in higher education who have offered to work in partnership in drawing up an agreement on providing medical and legal support through universities close to the areas where slave and degrading labour is prevalent. Information campaigns on the subject of such labour have already been established for university audiences. Again the Committee welcomes these preventative measures and asks to be kept informed as to their progress.

B. Punitive actions and strict enforcement of penalties

9. The Committee referred previously to the paucity of penal sanctions that had been imposed on those responsible for the exaction of forced labour and recalled that the action of the labour inspectorate was in itself not sufficient to eradicate cases of forced labour unless it could rely on the support of a judicial system capable of imposing severe punishment on violators. In its previous observation, the Committee noted the adoption of Act No. 9777 providing for increased sanctions for activities related to the practice of forced labour. This Act modified sections 132, 203 and 207 of the Penal Code by supplementing section 149 of the same Code ("reducing someone to a condition analogous to slavery"). The Committee requested the Government to supply detailed information on the number of persons sanctioned under sections 132, 149, 203 and 207 of the Penal Code.

10. The Committee notes the comments by the International Confederation of Free Trade Unions (ICFTU) of August 2000, transmitted to the Government in September 2000. These comments refer to information obtained by the Land and Countryside Commission and Anti-Slavery International, according to which Act No. 9777 was not being implemented and the action of the Mobile Inspection Group had not managed to bring those persons responsible to justice for having imposed forced labour. According to the statistics of the Ministry of Labour itself, between 1996 and 1999 only four persons were imprisoned for having imposed forced labour, despite the fact that during the same period the Mobile Inspection Group, in 25 operations, freed 1,266 workers found working in conditions of forced labour. According to the same report, the low level of legal proceedings could result from the labour inspectors only being able to impose administrative sanctions on finding evidence of forced labour, and having no competence to bring criminal proceedings against those responsible. The information is transmitted to the Attorney-General whose decision it is whether to initiate penal action. This procedure takes a considerable time, which reduces the possibilities for legal proceedings, since the freed workers generally leave the region to return to their homes or to find other sources of work. Moreover, the fact that the freed workers are not covered by immediate protection exposes them to threats and intimidation discouraging them from testifying at the proceedings.

In its previous observations, the Committee suggested to the Government to consider the proposal of the public labour prosecutors regarding the need to adopt specific and consolidated legislation on forced labour establishing both civil and criminal responsibility and giving the labour prosecutors the competence to bring criminal cases against persons who subject others to forced labour practices or degrading labour.

11. The Committee notes from the Government's report that it recognizes the need for a standardized framework of legislation to give force to the procedures in respect of the exaction of forced labour and the need for joint collaboration between the different bodies involved (Federal Prosecution Service, Labour Prosecution Service, Federal Police, the Labour Court and the Federal Court). The Government states that many cases, submitted by the Inspectorate of the Ministry of Labour and Employment, are at present before the Federal Attorney-General's Office which must undertake the basic investigations necessary to commence criminal action before the federal courts, which are competent to act in cases of forced labour.

12. The Committee hopes that the Government will communicate detailed information on the number of cases of forced labour brought before the Federal Attorney-General's Office through the inspection services of the Ministry of Labour and the date when they were submitted. The Committee also hopes that the Government will supply information from the Federal Attorney-General's Office on the progress and treatment of cases submitted by the Labour Inspectorate, particularly as regards the number and percentage of complaints which have resulted in criminal proceedings against the total number of complaints received through the inspection services. The Committee also hopes to receive the information requested in respect of the number of convictions imposed under Act No. 9777 and section 149 of the Penal Code.

13. The Committee, whilst recognizing the improved measures taken by the Government to combat forced labour, again expresses its concern that the failure to apply effective sanctions, the impunity enjoyed by those responsible, the slowness of judicial processes and the lack of coordination between the various governmental bodies are an impediment to the effective eradication of this grave violation of the Convention.

14. The Committee notes that the Government's report does not contain the information requested regarding allegations of minors forced into prostitution in the state of Rondonia, made by the International Confederation of Free Trade Unions (ICFTU) in October 1999. The Committee recalled that work by children in conditions of debt bondage, including the forced prostitution of minors, comes within the sphere of application of the Convention and took note of the Government's indication that it was giving priority to combating child labour.

The Committee hopes the Government will communicate information on the investigations which have taken place concerning these allegations and on any other measures which have been taken in this connection.

Cambodia (ratification: 1969)

Further to its earlier comments on Sub-Decree No. 10 SDEC of 28 February 1994 which provided for up to 15 days a year of compulsory labour for irrigation works, the Committee notes with satisfaction from the Government's latest report that the 1994 Sub-Decree was repealed by a new Sub-Decree No. 40 SDE of 4 July 2000, which provides for one day of manual work on hydrology, to be held on 4 March every year, which all adult citizens can voluntarily attend.

Cameroon (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

1. The Committee refers to its previous comments requesting the repeal or amendment of Act No. 73-4 of 9 July 1973 instituting the National Civic Service for Participation in Development, which allows the imposition of work in the general interest on citizens aged between 16 and 55 years for 24 months with penalties of imprisonment for refusal. The Committee notes the Government's explanations that non-repeal of the Act in question is linked to the pace of adoption of texts by the institutions of the Republic and that, since the National Office for Civic Service has been dissolved, the probability of there being cases of forced labour is unlikely.

Recalling that this Act has been the subject of comments for over 20 years, the Committee trusts that the Government will do its utmost to give priority to bringing the legislation into conformity with the Convention on this point and that it will indicate the measures taken.

2. *Freedom to leave the service of the State.* In its previous comments, the Committee noted that under the provisions of Act No. 80-12 of 14 July 1980, officers recruited by competition sign a contract of indeterminate duration which means in practice that they are required to serve until the age limit for their grade and that applications for resignation are accepted only on exceptional grounds.

The Committee noted the Government's indications that under sections 53 and 55 of the abovementioned Act, resignation of career members of the armed forces can be accepted on the following grounds: the person in question is recognized as the family breadwinner; he must succeed to his father, particularly if the latter is a traditional chief; or he believes he will have greater opportunities in an elective post.

Referring again to paragraphs 67 to 73 of its 1979 General Survey on the abolition of forced labour, the Committee recalls that persons in the service of the State, including career members of the armed forces, should have the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service.

The Committee hopes that the necessary measures will be taken to ensure that career members of the armed forces may leave the service within a reasonable period and that the Government will indicate the provisions adopted to this end.

3. *Article 2, paragraph 2(c), of the Convention.* The Committee has for very many years referred to the provisions of Decree No. 73-774 of 11 December 1973 promulgating the prison system which permitted the hiring of prison labour to private enterprises and individuals, and has asked the Government to take steps to prohibit this practice. The Committee noted the statement by the Government representative to the Conference Committee in 1990 drawing attention to measures adopted by the Ministry of Territorial Administration to prevent prison labour from being hired to, or placed at, the disposal of private individuals or companies. In its report received in 1996, the Government states that no new provisions have been adopted and that it would not fail to provide information on any action taken along the lines hoped for by the Committee.

In its latest report, the Government indicates that Decree No. 73-774 of 11 December 1973 promulgating the prison system has been repealed and replaced by Decree No. 92-052 of 27 March 1992. The Committee notes with regret that sections 51 to 56 of that decree still provide for the transfer of prison labour to private enterprises and individuals. It notes the Government's statement in its report that the problem of consent does not arise since requests exceed demand and the prisoners' freedom of choice is thus safeguarded.

The Committee notes that under sections 51 to 56 of Decree No. 92-052, the transfer of prison labour is not subject to consent by those concerned. Moreover, there cannot be real freedom of choice since the prison workforce, defined in section 53 as liable to compulsory labour, has no access to work, in law and in practice, other than in conditions established unilaterally by the prison administration. The absence of free choice is confirmed by section 56 of the Decree under which, without regard to the usual compulsory work and hiring out of prison labour, prisoners may be used without payment by the prison administration for productive work and work of general interest.

The Committee recalls that the transfer of prison labour to private enterprises and individuals is specifically covered in *Article 2, paragraph 2(c)*, of the Convention and, as it has indicated on many previous occasions, it is only when carried out in the framework of a free employment relationship that work for private enterprises and individuals may be considered to be compatible with the specific prohibition of *Article 2, paragraph 2(c)*. That necessarily requires the formal consent of the person concerned and, bearing in mind the circumstances of this consent, there must be supplementary guarantees covering the essential elements of a labour relationship, including a level of remuneration and social security corresponding to a free labour relationship for the employment to be outside the scope of *Article 2, paragraph 2(c)*, which prohibits unconditionally that persons obliged to perform prison labour be hired to, or placed at the disposal of, private enterprises.

The Committee hopes that the necessary measures will finally be taken to bring national provisions governing prison work into conformity with the Convention on these points. It requests the Government to supply information on any provisions adopted to this end and, meanwhile, to communicate copies of the implementing instruments mentioned in sections 51, paragraph 1, 52 and 53, paragraph 2, of Decree No. 92-052 of 27 March 1992, regulating the prison system in Cameroon.

The Committee is addressing a request directly to the Government on certain other matters.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Central African Republic (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. 1. Since 1966, the Committee has been pointing out to the Government that Ordinance No. 66-004 of 8 January 1966, respecting the suppression of idleness (as amended by Ordinance No. 72-083 of 18 October 1972) is contrary to the provisions of the Convention. The Committee also drew the Government's attention to the non-conformity with the Convention of section 11 of Ordinance No. 66-038 of June 1966 respecting the supervision of the active population, and sections 2 and 6 of Ordinance No. 75-005 of 5 January 1975, making the performance of commercial, agricultural and pastoral activities compulsory.

2. The Committee noted the Government's indications that the above-mentioned texts have fallen into abeyance and that measures were to be taken to bring the law and practice into conformity with international labour Conventions. With particular reference to Ordinance No. 66-004 of 8 January 1966, the Government has been stating for 30 years that repealing legislation has been drafted.

3. The Committee notes that the Government's report, while indicating that article 8 of the new Constitution of 14 January 1995 abolished forced labour in all its forms, does not contain any other information on the measures adopted to bring the above-mentioned texts

into conformity with the Convention. The Committee expresses firmly the hope that in the light of the new Constitution, the Government will take the necessary measures in the very near future to give effect to the Convention.

Article 2, paragraph 2(a), of the Convention. 4. In its previous observations, the Committee noted that section 28 of Act No. 60/109 of 27 June 1960 respecting the development of the rural economy, which provides for minimum surfaces for cultivation to be established for each rural community, is contrary to the requirements of the Convention. The Committee has also noted the Government's previous indication that the practice of compulsory cultivation no longer existed and that vigorous efforts were being made instead to provide guidance to encourage cultivation. In this light, and in view of the new Constitution, the Committee hopes there will be repeal or amendment of the legislation to bring it into conformity with the Convention.

5. The Committee also notes the Government's statement that new draft texts will be introduced to reinforce the national legislation on forced labour. It hopes that the new legislation will take into consideration the comments that it has been making on this subject for many years and that it will transmit copies of the texts which are adopted.

6. The Committee reminds the Government that it may call upon the technical assistance of the International Labour Office to help it resolve difficulties encountered in bringing its legislation into conformity with the ILO's Conventions on forced labour.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Comoros (ratification: 1978)

1. *Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention.* In its comments over a number of years, the Committee has drawn the Government's attention to section 1 of Order No. 68-353 of 6 April 1968, under which labour is compulsory for all persons in detention. In its report the Government indicated that this Order had not been abrogated but that in practice prisoners were not under the obligation to perform any kind of labour, either inside correctional institutions or on the outside. The Committee notes the comments made by the Union of Comoros Workers' Autonomous Trade Unions (USATC), transmitted by the Government in its report, according to which judicial and prison authorities had recourse to forced labour for detainees, political detainees and prisoners. The USATC indicated in 1999 that "certain workers of the Ports and Maritime Transport Company (SOCOPOTRAM) who had claimed their rights found themselves in jails of the national police and were forced to work by cleaning the area of the port". The Committee notes that in its response to the comments of the USATC, the Government condemned the fact that detained workers were forced to perform urban cleaning work. The Committee hopes that the Government will take the measures necessary to ensure that persons detained without having been convicted shall work only on a voluntary basis and at their request.

2. In its earlier comments the Committee also referred to section 7, paragraph 2, of Order No. 68-353 of 6 April 1968, according to which prisoners whose conduct is considered satisfactory can work for a private employer with a view to their moral rehabilitation or re-adaptation to normal working life. It requested the Government to provide information on the practice of private individuals or companies using prison labour. In its report the Government indicated that it envisaged the abrogation of the Order in question. The Committee hopes that the Government will soon be able to

announce the abrogation of Order No. 68-353 and that it will transmit a copy of the abrogating text.

Congo (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

1. Since 1961, the Committee had requested the Government to repeal Act No. 24-60 of 11 May 1960, which permits the requisitioning of persons to undertake work of public interest that is not confined to cases of emergency and which imposes penalties of imprisonment ranging from one month to one year in the event of refusal.

The Committee noted that, after having long indicated its intention of repealing the above Act, the Government had stated that it was prepared only to restrict its scope to cases of emergency as laid down in *Article 2, paragraph 2(d), of the Convention*.

The Committee again requests the Government to take the necessary measures to ensure respect for the Convention on this point and to indicate progress made in this direction.

2. In its previous comments, the Committee had noted that the Government may call upon the population to perform certain sanitation work. The Government had indicated that this practice derived from section 35 of the Statutes of the Congolese Labour Party. In its latest report, the Government had indicated that mobilization of the population for work of collective interest – a practice which was in force at the time of the single-party system – no longer existed, pointing out that such tasks (weeding, sanitation work) were now carried out on a voluntary basis by associations and by the employees of the State and local communities.

The Committee again requests the government to indicate the measures taken or envisaged to establish in law or through regulations the voluntary nature of the work performed by the population, so as to ensure effective observance of the Convention.

3. *Article 2, paragraph 2(a)*. On several occasions, the Committee had drawn the Government's attention to section 4 of Act No. 11-66 of 22 June 1966 establishing the National People's Army and section 1 of Act No. 16 of 27 August 1981 introducing compulsory national service. The former provides that the Army must actively participate in the tasks of economic construction for productive economic enterprise and the latter stipulates that national service, which comprises both military and civic service, enables every citizen to take part in the defence and construction of the nation.

The Committee had drawn the Government's attention to *Article 2, paragraph 2(a)*, of the Convention which provides that work or service exacted in virtue of compulsory military service laws is excluded from the scope of the Convention only when it is performed for work of a purely military nature. The work exacted from recruits as part of national service, including work related to national economic development was not work of a purely military character and the Committee had referred in this connection to paragraphs 24 to 33 and 49 to 62 of its 1979 General Survey on the abolition of forced labour.

In regard to section 4 of Act No. 45/75 of 15 March 1975 which exempted from the prohibition of forced or compulsory labour, *inter alia*, "obligations arising out of the civic service for youth", the Committee had noted with interest that this exemption was not maintained in section 4 of Act No. 6-96 of 6 March 1996, amending and supplementing certain provisions of the Act of 15 March 1975 which establishes the Labour Code for the People's Republic of the Congo.

The Committee had noted the Government's statement to the effect that a multi-party system had been introduced and the National People's Army had been replaced by the

Congolese Armed Forces, undergoing restructurization. However, the latest report contained no information regarding the tasks carried out by recruits in the application of the provisions of Act No. 16 of 1981 with respect to compulsory national service.

The Committee again requests the Government to provide information on the effect given in practice to the provisions of Act No. 16 of 27 August 1981, to supply a copy of the Decree adopted under section 12 of this Act and to indicate the measures taken or envisaged to ensure compliance with the Convention on this matter.

4. In its previous comments, the Committee had referred to section 17 of Act No. 31-80 of 16 December 1980 on guidance for youth under which the party and mass organizations would gradually establish the full conditions for the formation of youth brigades and the organization of youth workshops where young people would be employed.

The Committee had noted that a draft text relating to voluntary work by young people was in the process of being approved and had requested precise information on the nature of the work carried out, the number of persons concerned and the duration and conditions of employment.

The Committee had noted the Government's indication that these practices fell into abeyance with the advent of democracy in 1991, the immediate consequence of which was the introduction of a political pluralism. The Committee had noted that the report did not indicate whether Act No. 31-80 was still in force and, if so, did not contain the information requested on its application in practice.

The Committee again requests the Government to indicate the measures taken or envisaged to bring national legislation into conformity with the Convention on this subject.

5. The Committee had been informed that traditional forms of slavery continue to be practiced in the country, and in particular, forced labour by Pygmies, who were bonded for life to their Bantu owner in plantations in the north in the Ouessou district. The Committee also noted information on cases of slavery among Bantus in the port town of Point Noire. The Committee requests the Government to supply any relevant information on the situation.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Côte d'Ivoire (ratification: 1960)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c) of the Convention. The Committee has since 1962 drawn the Government's attention to sections 24, 77 and 82 of Decree No. 69-189 of 14 May 1969 (issued under sections 680 and 683 of the Criminal Procedure Code) which provides that prison labour may be hired to private individuals. The Committee has already recalled in numerous comments on this legislation that it is only when work is voluntarily accepted by prisoners and carried out in conditions similar to those of free employment relations (e.g. as to wages) that prison work for a private enterprise or person may be regarded as compatible with the Convention. The Committee refers to paragraphs 97 to 101 of the General Survey of 1979 on the abolition of forced labour and the more recent comments in its General Report of 1998, paragraph 125.

The Committee has noted the Government's statement that the draft amendments to bring the above-mentioned Decree into conformity with the provisions of the Convention have not been completed. The Committee requests the Government to provide information on any developments and any progress achieved in this regard. The Committee also reminds the Government that it may call upon the technical assistance of the International Labour

Office to help with any difficulties encountered in bringing its legislation and practice into conformity with the Convention.

In addition, the Committee has become aware of information according to which there is a widespread practice of migrant labourers, including children particularly from Mali and Burkina Faso, being forced to work on plantations against their will. The Committee would be grateful if the Government would include information on this point in its next report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Democratic Republic of the Congo (ratification: 1960)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. For several years the Committee has been asking the Government to repeal or amend certain legislative texts and regulations which are contrary to the Convention. They are:

Act No. 76-011 of 21 May 1976 concerning national development efforts and its Implementing Order No. 00748 BCE/AGRI 76 of 11 June 1976 which requires, under penalty of penal sanctions, every able-bodied adult person who is not already considered to be making his contribution by reason of his employment (political representatives, wage earners and apprentices, public servants, tradesmen, members of the liberal professions, the clergy, students and pupils), to carry out agricultural work and other development work as decided by the Government;

sections 18 to 21 of Legislative Ordinance No. 71/087 of 14 September 1971 on minimum personal contributions, which provides for the imprisonment involving compulsory labour of tax defaulters by decision of the chief of the local community or the area commissioner, as a means of recovering the minimum personal contribution.

The Committee noted the information reiterated by the Government stating that there were draft amendments to the provisions in question.

The Committee expresses the strong hope that the Government will shortly take the necessary measures to ensure full application of the Convention.

2. *Article 2, paragraph 2(c), of the Convention.* The Committee drew the Government's attention to Ordinance No. 15/APAJ of 20 January 1938 respecting the prison system in native districts, which allows work to be exacted from detainees who have not been sentenced.

The Committee noted, on the one hand, the Government's indications that the text had fallen into disuse and was contrary to Ordinance No. 344 of 17 September 1965 governing prison labour and, on the other, the Government's intention to repeal it.

The Committee also noted the information supplied by the Government to the effect that the Supreme National Conference has decided to reform the penitentiary system and repeal certain provisions of the law. The Committee expresses strongly the hope that measures will be taken in the near future to bring national legislation and practice into conformity with the Convention.

3. *Article 25.* In its earlier comments, the Committee stressed the need to include a provision in the national legislation establishing penal sanctions for persons who unlawfully exact forced or compulsory labour, in accordance with *Article 25* of the Convention.

The Government indicated that, in view of the changes in industrial relations and personal freedoms, the revised draft of the 1967 Labour Code was under consideration and

that provisions establishing penal sanctions for persons exacting forced labour would be inserted into it.

The Committee expresses strongly the hope that the Government will shortly bring legislation into conformity with the requirements of *Article 25* of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Dominica (ratification: 1983)

The Committee notes the Government's reply to its earlier comments.

Article 2(2)(a) and (d) of the Convention. The Committee previously noted that, under sections 12 and 28 of the National Service Act, 1977, persons between the ages of 18 and 21 years, among others, are required to perform service with the National Service. It noted that servicemen are to undertake training and employment and perform such duties as may be prescribed and, where possible, be engaged in development and self-help projects including housing, school, construction, agriculture and road-building (section 29). Persons who fail without reasonable excuse to present themselves to serve when called upon may be punished with a fine and imprisonment (section 35(2)).

Having noted the Government's repeated statements that the National Service was created to respond to national disasters and that section 35(2) of the Act has not been applied, the Committee referred to section 9(1) of the Act, according to which the objectives of the National Service "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Committee observed that there is no reference to natural disasters, let alone a limitation in scope to such occurrences. It also referred to *Article 1(b)* of the Abolition of Forced Labour Convention, 1957 (No. 105), ratified by Dominica in 1983, which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development", and requested the Government to take the necessary measures with a view to repeal or amend the 1977 National Service Act so as to bring national legislation into conformity with Conventions Nos. 29 and 105.

The Government indicates in its latest report that no measures have been taken to repeal the National Service Act of 1977. The Committee trusts that appropriate measures will be taken in the near future in order to bring national legislation into conformity with the Conventions and asks the Government to provide, in its next report, information on the progress made in this regard.

France (ratification: 1937)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

The Committee has noted the detailed information contained in the Government's reports in response to the Committee's earlier comments, as well as the observations submitted by the French Democratic Confederation of Labour (CFDT) in October 1996 and September 1998.

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. 1. In its earlier comments, the Committee raised a certain number of points

relative to prison labour and, in particular, the question of consent freely given by the prisoner, the employment contract, and the wages and conditions of work of prisoners in the event that they are made available to private enterprises. The Committee requested the Government to adopt the necessary measures both in law and in practice to ensure that the employment conditions of these prisoners allow their situation to be assimilated to that of free workers.

2. The CEDI in its communication reiterated its request for a contract to be concluded between the prison administration and prisoners, defining the obligations of the parties. The CEDI also considered that the supervision of prison labour should be entrusted to a labour inspection service, since legislation relating to health and safety at work should be applied in prisons under the same conditions as elsewhere.

3. The Committee has taken due note of the Government's statement that a Bill establishing a labour inspection service has been drawn up, and a circular defining the methods of work of the prison labour inspection services with regard to health and safety at work and vocational training has also been drafted. The Committee hopes that the Government will provide copies of the final texts as soon as they have been adopted.

4. The Committee has also noted that, following an agreement concluded between the prison authorities and the local medical service, medical examinations will shortly be introduced, during a trial period, for prisoners who are working. The Government indicated that a legal and social text with respect to prison labour is being drawn up and that the themes covered (remuneration, social protection, health and safety at work) will provide responses to the questions that are being raised in this regard. The Committee trusts that the Government will provide full information in its next report.

5. Finally, the Committee has noted with interest the Government's statement that the average daily wage paid to prisoners has been increased although disparities remain among different types of prison labour. The Committee requests the Government to continue to take measures to ensure that wages and employment conditions of prisoners who are made available to private enterprises conform to relevant standards and to provide information in respect of the measures adopted or envisaged in this regard.

6. The Committee recalls that the Convention clearly excludes the use of prison labour for the benefit of private enterprises; however, where the necessary safeguards exist to ensure that prisoners accept work voluntarily and prison labour is carried out under the supervision and control of the public authorities, the Committee refers to paragraph 97 of the General Survey of 1979 on the abolition of forced labour and paragraphs 116 to 125 of the General Report of 1998: the Committee considers that an employment contract could, particularly in prisons, resolve this problem by ensuring that the necessary safeguards are provided. However, the Committee hopes that the Government will provide in its next report all the necessary information to enable a general assessment of the situation in respect of these provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guatemala (ratification: 1989)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

1. The Committee referred in its previous observation to the recommendation of the committee set up by the Governing Body to examine a representation against Guatemala under article 24 of the Constitution. That committee recommended the repeal of Legislative Decree No. 19-86, which provided for the compulsory enlistment of hundreds of thousands

of people in so-called Civil Self-Defence Patrols (PACs) and Voluntary Civil Defence Committees (CVDCs).

2. Referring also to its observation under the Abolition of Forced Labour Convention, 1957 (No. 105), the Committee notes with satisfaction the repeal of Decree No. 19-86 by Decree No. 143-96, which came into force on 30 December 1996.

3. The Committee also notes with interest that the abovementioned civil defence committees have been demobilized and disarmed, under international control, in the framework of the peace agreements signed by the Government. From this point of view, the Committee therefore notes that the Government has taken measures to give effect to the conclusions of the Governing Body at its 267th Session in relation to the abovementioned representation.

4. The Committee notes that the Government's reports do not contain any information with regard to the application of *Article 25 of the Convention*. The Committee notes in this respect that the Governing Body stated in its conclusions that "persons accused of having exacted forced labour have benefited from impunity in cases where the Attorney-General of the Republic of Guatemala has issued a decision concerning their responsibility and that the appropriate judicial action has not been taken against them". The Governing Body therefore urged the Government "to ensure the rapidity of the judicial processes and inquiries undertaken concerning the exaction of compulsory labour and to guarantee the imposition of penalties and their strict enforcement". The Committee believes that it is necessary to recall once again that in accordance with *Article 25 of the Convention*, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying the Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced. The Committee therefore requests the Government to provide information in its next report on the measures which it has taken to give effect to the above recommendations so that it can examine the manner in which these points have been followed up.

The Committee is addressing a request directly to the Government on other matters.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Haiti (ratification: 1958)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

The Committee refers to its previous comments in regard to the employment of children as domestic servants, known as "restavek". It recalls that under section IX of the Labour Code (L.S. 1984-Haiti I) on children employed in service, the Directorate of the Social Welfare and Research Institution (IBESR), which is represented in every regional office of the Ministry of Social Affairs, plays a key role by: issuing the permit needed for any person to take a child into his service; drawing up a report on any act of violence committed on the person of the child; arranging for visits to households in which there are children in service in order to inquire about their living conditions; requiring the labour court to impose the fines provided for any breach of the provisions set out in the section; and regulating in detail the obligations of employers of children in service and the rights of the children as well as the protection which must be accorded to them. In towns where there is no regional office of the Ministry of Social Affairs, the municipal administration supervises execution of the provisions of this chapter on children in service and issues the authorizations and certificates required.

In its previous observation, the Committee noted the Government's commitment to communicate statistics in respect of the activities of the IBESR, the municipal authorities and the labour courts, and to conduct an exhaustive study into general working conditions. The Committee notes that the Government's report contains no information on these points and takes due note of the Government's wish to obtain the support, aid and cooperation of the ILO.

On this matter, the Committee notes with interest that a project of the ILO's International Programme for the Elimination of Child Labour (IPEC) has just been established in Haiti in order to assist the Government in combating effectively child labour in general, and the "restavek" system in particular. The Committee hopes that the Government will send a copy of the national plan of action to fight child domestic work which will be adopted in the framework of this project, as well as any relevant information on developments noted, results obtained, statistical data established and legislative or regulatory measures taken.

Furthermore, the Committee hopes that the Government will specify the amount of the fines that can be imposed under the provisions of section IX of the Labour Code, as amended, and that it will provide any indications it deems useful concerning the issue of whether these amounts constitute, under *Article 25 of the Convention*, "really adequate" penalties.

Finally, the Committee trusts that the Government will supply detailed information on the practical application of Chapter IX of the Labour Code, including statistics on the number of permits issued by the IBESR and by the municipal administrations in regard to taking children into domestic service, on the visits and inquiries made in households where there are children in service, on breaches to the provisions of section IX noted, on the reports prepared and inquiries addressed to the labour court by the IBESR, as well as the fines imposed and damages awarded in application of these provisions.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

India (ratification: 1954)

1. The Committee notes the information provided orally by the Government to the Conference Committee on the Application of Standards at its 28th (June 2000) Session, following its previous comments, though it regrets the Government has not communicated a written report for examination at its present session in response to the long discussion in the Conference Committee. It hopes the Government will shortly submit a written report, which will provide detailed information in response to the following comments.

Bonded labour

2. The Committee recalls that it has referred on many occasions to the urgent need to compile accurate statistics of the number of persons who continue to suffer under bonded labour, using a valid statistical methodology, with a view to identification and release of these persons. It recalled that estimates vary between the 280,340 identified by the Government as of 31 March 1999, and some ten million estimated still to exist by non-governmental organizations. Other official information generated within India has referred in the past to much higher numbers than those cited recently by the Government, for instance the survey conducted by the Ghandi Peace Foundation and the National Labour Institute in 1978-79 which cited a number of 2.6 million. Noting the

reluctance of state governments within the country to participate in such efforts, the Committee again urges the Government to take effective measures to ensure that they will participate in an early and concerted effort to do so. It notes, for instance, offers recently made by the central Government to states to provide funding to identify districts where bonded labour still exists, examining the reasons for its continued existence and examining ways to abolish the practice; and the slowness or absence of responses to this proposal. The Committee also notes that the Conference Committee urged the Government to undertake a comprehensive and authoritative survey.

3. The Government has referred once again to the technical difficulty of identifying bonded labourers. The Committee notes the reference by the Government during the Conference Committee discussion to a recent Supreme Court decision which ruled that when a labourer supplies labour free, it may be presumed that he or she was obliged to do so due to a loan or some other exploitative economic arrangement. The Government representative stated that this judgement had been communicated to the districts and subdivisions, and that it was hoped it would facilitate the release of bonded labourers. The Committee requests the Government to provide the text of the judgement, and to indicate whether it has been put into effect at the state level in helping to identify bonded labourers.

4. In the absence of a written report, the Committee has no information available in response to its previous requests for information on further action, including release of bonded labourers in several states during 1998-99 referred to in the previous report; a proposal that was being processed in consultation with the Ministry of Finance to provide funds to all released bonded labourers; deputizing senior officials to visit certain areas to review and monitor progress made in implementing the Bonded Labour (Abolition) Act, 1976; review meetings held between the Ministry of Labour and state governments, et al. The Committee therefore repeats the request it made in its previous observation for written information on the progress achieved on all these matters.

5. The Committee also hopes that an ILO project developed as a direct response to the recently adopted Worst Forms of Child Labour Convention, 1999 (No. 182), and the recent ILO Declaration on Fundamental Principles and Rights at Work, will be of assistance to the Government in combating bonded labour. The project is for an initial period of three years, and is designed to induce existing microfinance institutions to develop, test and offer tailor-made savings and loan products to vulnerable families on the verge of becoming bonded, or already bonded, or, after their release, to support rehabilitation.

Child labour

6. The Committee recalls that in its previous observation it raised a number of questions concerning efforts to eliminate child labour falling under the present Convention (i.e. in conditions which are sufficiently hazardous or arduous that the work concerned cannot be counted as voluntary). The Committee had before it observations from the International Confederation of Free Trade Unions on this and other points, to which the Government had not replied. It notes the assurances given at the Conference Committee in June 2000 concerning the efforts being made by the Government to address this issue, but it again requests the Government to provide replies to the various points put in that observation, which read in relevant part as follows:

8. As regards child labour, the Committee notes ... information from the International Programme for the Elimination of Child Labour (IPEC) on the matter, and the Government's report to the UN Committee on the Rights of the Child (document CRC/C/28/Add.10, 7 July 1997).

11. The Committee notes the indication in the Anti-Slavery International communication (*Note received from the International Confederation of Free Trade Unions, and therefore receivable by the Committee*) that many small production units – with fewer than ten persons where no electric power is in use, or fewer than 20 where electric power is used – are not subject to inspections under the Factories Act, 1948. Such units, for instance in "pappad" (tappalam) production or in certain tanneries, employ children, directly or indirectly, and also as bonded labourers.

12. The Committee asks the Government to:

comment on the abovementioned Anti-Slavery International communication and also to indicate what measures have been taken to address child labour in the unorganized sectors, i.e. in small-scale units not covered by the Factories Act, in cottage industries, particularly in such occupations as are hazardous to the child;

report on an assessment of the impact of the Notification of 27 January 1999 extending the list of hazardous occupations and processes of the Schedule of the Child Labour (Prohibition and Regulation) Act, 1986;

communicate copies of reports by the National Authority on Elimination of Child Labour, on actions taken to eliminate child labour, particularly child bonded labour;

provide information on how effect is being given to the directions of the Supreme Court in its judgement referred to above.

7. In addition, the Committee notes the Concluding Observations of the United Nations Committee on the Rights of the Child (CRC) following its examination of the report of the Government of India on the Convention on the Rights of the Child (UN doc. CRC/C/15/Add.15, 23 February 2000). That Committee notes, inter alia, that it "remains concerned at the large numbers of children involved in child labour, including bonded labour, especially in the informal sector, household enterprises, as domestic servants, and in agriculture, many of whom are working in hazardous conditions. The Committee is concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law". The Committee on the Rights of the Child makes a number of recommendations, which the present Committee can only share: that the 1986 Child Labour Act 1986 be amended so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children; that the Factories Act, 1948 be amended to cover all factories or workshops employing child labour; and that the Beedi Act be amended so that exemptions for household-based production are eliminated. The CRC goes on to make other recommendations, including that India ratify ILO Conventions Nos. 138 and 182.

8. The Committee requests the Government to provide detailed information on all these matters.

Prostitution and sexual exploitation

9. In its previous comments the Committee posed a series of questions and requested detailed information in reply. While the Government did not submit a written

report, the Government representative at the Conference Committee in June 2000 expressed the opinion that Indian legislation was fully in accordance with Convention No. 29, but indicated that the general level of poverty and unemployment in the country might result in the exploitation of children despite these legal measures. He indicated that it was therefore necessary to strengthen enforcement mechanisms so that all complaints would be properly investigated and all offences punished. He also referred to a survey conducted by the Central Social Welfare Board in six cities, which had found that there were 70,000-100,000 prostitutes in India and that 30 per cent of this number were under 20 years of age. He spoke of a strategy to improve the economic resources of families and to conduct an awareness-raising campaign to alert the public to this problem. Finally, he noted that the Provincial Government of Uttar Pradesh had commissioned a study on child prostitution and stated that the study would be made available to the ILO once it was completed.

10. The Committee once again expresses the firm hope that the Government will take firm measures on an urgent basis to combat the various kinds of forced labour still existing in the country, and that it will continue to submit written as well as oral reports to the ILO on these efforts. It remains particularly important to mobilize both central and provincial governments in this effort, and to mobilize both the financial and political resources necessary to accomplish the work that needs to be done.

[The Government is asked to report in detail in 2001.]

Indonesia (ratification: 1950)

The Committee notes the Government's report.

1. The Committee had asked the Government to supply information on the situation of children obliged to work under extremely dangerous conditions on fishing platforms off the north-east coast of Sumatra. It notes from the information communicated by the Government in its report of February 1999, that the Government is aware that this situation is not compatible with the Convention, but that it is due to the difficulty experienced by the families of these children to find other sources of income. The Government states that the local government of the north of Sumatra has been called on to create alternative sources of income for the population living along the coasts of this region and that the Government, in collaboration with the ILO's International Programme for the Elimination of Child Labour (IPEC), is currently undertaking a study with a view to solving the problem of the children working on fishing platforms (*jermals*). The Government also indicates that the local government has received instructions to replace all the children by adult workers, and that the Governor has established a team in charge of gathering statistics on the number of children who should be receiving schooling; the number in need of training for work having reached the age of employment; and the number of children who could become self-employed.

2. The Committee notes that one of the IPEC programme objectives in the field of eradication of child labour in the fisheries sector in Indonesia, of which the Committee has been informed, is to remove 1,900 children from the fishing platforms before 2001. However, the Committee notes the information presented in the case studies carried out under the IPEC programme, which suggest that there have been cases of forced recruitment and kidnapping, which have targeted the most vulnerable children, such as street children. The Committee notes that the Government is involved in this

programme. The Committee also notes the statement made by Anti-Slavery International at the 25th Session of the United Nations Working Group on Contemporary Forms of Slavery held from 14 to 23 June 2000, that children are still working on the platforms. It appears from the interviews carried out during the study that organizations conducted, that children are removed from the platforms when the inspection visits are announced. According to this information, some children are obliged to remain on the platforms without being paid for their labour, after working 12 hours a day over several months.

3. The Committee hopes that the Government will supply information on the measures taken to ensure that its instructions are strictly applied as regards the recruitment of children for work on fishing platforms, so as to avoid them being subject to conditions of forced labour and exploitation, particularly as regards the payment of wages and working hours, to which neither the children themselves could freely agree, nor their parents in their place.

4. In its previous observation, the Committee referred to the situation in East Kalimantan on the Island of Borneo, where, according to allegations formulated by the World Confederation of Labour (WCL), the Dayak tribe were submitted to conditions of debt bondage. This situation arose from practices in commercial logging concessions under community development programmes drawn up by the enterprises and in industrial forest plantations. By way of compensation for the negative impact of these concessions on local communities, the Government is said to have required all concessions to undertake the development of a nearby community under the HPH Bina Desa Programme; however, according to the WCL, these programmes were commonly misused by companies, which coerced and threatened villagers into forming work groups and farmers' groups. The groups were then ordered to carry out uncompensated labour on participatory development projects designed by the company without regard for the needs or wishes of the community being "developed".

5. The Committee also noted that, according to the WCL, under the industrial forest transmigration programme, impoverished farmers from Java were provided with a boat ticket to a Kalimantan port. They were then placed in far-flung locations, where some had no choice but to engage in plantation labour for a wage lower than the cost of living, forcing them into debt. Indigenous people, as well as transmigrant workers, were forced into a situation of total dependence and impoverished workers were turned into bonded labourers.

6. The Government indicated in its September 1998 report that the objective of the community development programme was to assist the village community in acquiring economic and social facilities such as roads and village meeting halls, developing various local businesses, and improving awareness of forest conservation and security. Planning and implementation by the logging concessions is always based on a diagnostic study, which is to identify the economic condition and potential of the respective village as well as social conditions, aspirations and expectations of the community. To build the economic and social facilities, the Dayak people ask only for support from the programme to provide the material needed. They work together voluntarily without expecting wages. The Committee had asked the Government to provide information on the practical application of the programmes, and particularly on any measures aiming, for example, at guaranteeing that the villagers concerned enter into the programmes voluntarily and that there is no form of compulsory labour.

7. The Committee notes the information communicated by the Government in its February 1999 report, to the effect that the industrial forest plantation transmigration (IFP), is carried out through voluntary recruitment, with families receiving adequate lodgings. The worker is paid a wage that must not be lower than the regional minimum wage, and the working week is around 40 hours. The Government also indicates that four of the indigenous community leaders met between 21 and 24 July 1998, and agreed that the migration implantation programmes were well accepted and should not be called into question. The Government also made efforts to meet the leaders of the indigenous communities and social workers from the villages engaged in the community development programmes. These meetings have shown that the communities appreciate the presence of the IFPs and their support to the development of the economic and social infrastructure of the community, and the populations of the villages are aware that they are participating in collective work, for which they have given their own consent, willingly.

8. The Committee takes due note of these indications. It requests the Government to continue to supply information on the situation of indigenous communities engaged in IFPs, in particular on the measures taken to ensure the principle of voluntary recruitment in practice. The Committee asks the Government to indicate whether the indigenous worker engaged in the IFP signs a contract of employment, and to transmit a copy of such contract. The Committee also wishes to receive information on the amount of the wages effectively earned by IFP participants.

9. In its earlier comments, the Committee also mentioned a joint decree by the Ministries of Forestry and Transmigration, requiring the logging concessions to develop industrial forest plantations known as Huraman Tanaman Industry (HTI). The Committee had been informed that the wages paid in the plantations were usually significantly lower than the cost of living, that shops had opened near the plantations or logging worksites, and that purchases at these stores were made by a system of vouchers managed by the company. This system was established on the basis of wages to be earned by the workers, thus creating the risk of debt bondage. The Committee noted that the report contained no comment on this point with regard to debt bondage, and asked the Government to provide information on this matter. The last report was also without information on this question, and the Committee hopes that the Government will supply the detailed information requested in the near future.

Iraq (ratification: 1962)

*Restrictions on workers' freedom
to leave their employment*

In comments made for a number of years under both Conventions Nos. 29 and 105, the Committee has drawn attention to the restrictions imposed on workers throughout the economy to leave their employment by giving notice – restrictions that are enforceable with penal and other sanctions.

In its latest report, the Government states that there are no constraints imposed on the freedom of workers to end their service as provided for in section 36 of the Labour Code (No. 71 of 1987) which concerns the termination of labour contracts. Under section 36, paragraph 3, of the Labour Code, a labour contract of indefinite duration ends

when the worker decides to terminate it, provided he or she has given the employer written notice at least 30 days before the date of termination set. The Government adds that military personnel in the armed forces do not come under these provisions.

The Committee has taken due note of these provisions. It must, however, point out once again that, under Revolutionary Command Council Resolution No. 150 of 19 March 1987, the rights and obligations of officials shall also apply to all labourers in state departments and the socialist sector who are thus removed from the scope of the application of section 36, paragraph 3, of the Labour Code and come under the following provisions:

- under article 35 of the Civil Service Act (No. 24 of 1960), the resignation of an official is not valid unless accepted by a decision of the competent authority;

- under Revolutionary Command Council Resolution No. 521 of 7 May 1983, resignation of Iraqi officials appointed in the state departments of socialist or mixed sectors shall not be accepted before ten years of actual service in such departments, and moreover the resigning official shall bear the expenses of studying at all educational stages passed before appointment or during the period of service;

- under Revolutionary Command Council Resolution No. 700 of 13 May 1980, an official who resigns without the approval of the department shall in addition be deprived of the rights arising from previous service;

- only women may have their resignation accepted without any conditions, by virtue of resolution No. 703 of 5 September 1987;

- resignation restrictions also apply to civil officers and seafarers under section 40 of Law No. 201 of 1975 on the Civil Marine Service, and to various categories of officials under Resolutions Nos. 917 of 1988 and 550 of 1989;

- finally, under section 364 of the Penal Code of Iraq, any official and any person in charge of a public service may be punished with imprisonment, *inter alia*, if they leave their work, even after having resigned, if this might paralyse a public service.

Referring to the comments made for a number of years under both the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), the Committee must once again point out that the effect of statutory provisions preventing termination of employment by means of notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law, and is thus incompatible with the Conventions relating to forced labour. This applies to workers throughout the socialist and mixed sectors as well as to public officials and, in time of peace, to career members of the armed forces, all of whom must remain free to terminate their employment by giving notice of reasonable length. The Committee once again expresses the hope that the necessary measures will at last be taken to bring national law into conformity with the Convention in this regard, and that the Government will supply information on the measures taken to this end.

Jamaica (ratification: 1962)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. The Committee noted in its earlier comments that, under section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991, no inmate may be employed in the service of, or for the private benefit of, any person, except with the authority of the Commissioner or in pursuance of special rules. The Committee has noted, from the Government's report, that the Correctional Services Production (COSPROD) Holdings Limited, established in 1994, was created to manage the integration of the process of rehabilitation through skills training and productive utilization of the human resources in the correctional facilities. The Committee notes the Government's information that under the programme inmates work under the conditions of a freely accepted employment relation, with their formal consent and subject to guarantees regarding the payment of normal wages.

The Committee draws the Government's attention to its General Report of 1998 (particularly paragraphs 116-125), which recalls that any work exacted from any person as a consequence of a conviction in a court of law is exempted from the scope of the Convention, provided it is carried out under the supervision and control of a public authority and that such person is not hired to or placed at the disposal of private parties.

The Committee requests the Government to provide a copy of the rules governing inmate work in the framework of COSPROD and the practice of supervision of that work under the COSPROD programme, as well as any special rules under section 155(2) of the Correctional Institution (Adult Correction Centre) Rules of 1991, particularly with respect to the creation and the role of COSPROD.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Japan (ratification: 1932)

1. The Committee recalls that in several recent sessions, it has considered the application of the Convention to two situations which occurred during the Second World War: that of wartime "comfort women" and of wartime industrial forced labour. It notes that since the last such examination, there has continued to be considerable volume of correspondence from workers' organizations, requesting the Committee to examine the case further, as well as substantial replies from the Government recalling the reasons for which it considers the questions to be closed.

2. In its report, the Government states that it "has made it clear from the outset that Japan has already settled the issues of reparation, property and claims relating to the last war with the governments concerned, and that the issues raised by the Committee of Experts are within the scope of these issues which have been settled. Accordingly, the Government of Japan considers that they should not be taken up for deliberation by the ILO". In this regard, the Government refers to the San Francisco Peace Treaty, bilateral peace treaties, and other relevant treaties and agreements between Japan and Indonesia, China, the Republic of Korea and the United States, all of which included provisions foreclosing individual claims against Japan by citizens of those countries. The Government also refers to various formal expressions of apology, as well as to substantial development assistance to a number of the countries concerned. The Government adds that: "It is quite clear that ... these issues hold no relevance to the ILO as current topics for deliberation. The Government of Japan therefore strongly hopes that this will be the last time for the Committee of Experts to take up and deliberate on these issues." The Government also refers to the comments of the Japanese Trade Union Federation (JTUC-Rengo), in a letter dated 20 October 2000, indicating that "Rengo

supports the report of the Japanese Government" and that "Rengo insists also strongly that it is appropriate for the Committee to close deliberations on these cases".

3. The Committee recognizes that, as a matter of law, the Government is correct in stating that compensation issues have been settled by treaty. It feels, nonetheless, that it is important to continue to deal with the extensive comments of trade unions on this subject, to note developments in how claims for compensation are handled, and to provide information on how the Government views the question. It hopes that it will be unnecessary to do so again at future sessions.

4. The Committee notes that in addition to the workers' organizations' observations it discusses below, it has also received observations from Tokyo Local Council of Trade Unions – Tokyo-Chihyo, in a letter dated 1 November 2000. This communication has been sent to the Government for any comments it may wish to make, and will be examined when any such comments arrive.

1. Wartime "comfort women"

5. In its previous observations, the Committee has noted the gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations" during the Second World War and the years leading up to it, when the women concerned were forced to provide sexual services to the military. The Committee has found that this was contrary to the requirements of the Convention, and that such unacceptable abuses should give rise to appropriate compensation, while noting also that it did not have the power to order relief. The Committee has stated that this relief could only be given by the Government as the responsible body under the Convention and that, in view of the time elapsed, it hoped that the Government would give proper consideration to the matter expeditiously. The Committee notes that the Worker members of the Conference Committee on the Application of Standards stated in 1998 that, while the case was not to be discussed in full by the Conference Committee, they hoped that the Government would meet with the trade unions and the representative organizations of the women concerned, as well as with other governments, to find an effective solution which met the expectations of the majority of the victims.

6. The Committee has also noted in previous observations that the Government has indicated that, while it was not directly liable for compensation to these women, it has provided the maximum possible support to the "Asian Women's Fund" (AWF), which was established in 1995 with the aim of achieving the atonement of the Japanese people and providing funds to the women concerned. The Committee also noted the Government's indication that it has also provided considerable medical and welfare support to countries in which the victims live through the use of government resources. The organizations which have asked for additional measures from Japan have taken the position that the AWF is not a sufficient response, as there has been no compensation paid to victims directly by the Government and no apology based on an acknowledgement of legal responsibility towards the victims. They have noted that most of the women concerned have not availed themselves of the assistance of the AWF, though the Government has indicated some 170 cases in which assistance from this fund has been accepted.

7. Further comments have been received on this question from several workers' organizations. The Federation of Korean Trade Unions and the Korean Confederation of

Trade Unions, in a letter of 8 September 2000, forwarded information on the consideration by the United Nations Sub-Commission on the Promotion and Protection of Human Rights of the issue of wartime sexual slavery, in particular the report by Ms. Gay McDougall, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices (UN document E/CN.4/Sub.2/2000/21) and the resolution on the same issue adopted by the Sub-Commission in 2000. (Similar references have been made by other organizations, but will not be repeated below.) The Government has noted that although the report did deal in part with Japan, the resolution makes no mention of Japan, but refers instead to ongoing and more recent situations. The Committee notes, however, the opinion expressed in the resolution on an earlier report of the Special Rapporteur that "the rights and obligations of States and of individuals referred to in the present resolution cannot, as a matter of international law, be extinguished by treaty, peace agreement, amnesty or by any other means" (UN document E/CN.4/Sub.2/RES/1999/16).

8. The two unions also indicate that eight lawsuits are being examined by Japanese courts in which wartime "comfort women" are demanding compensation and formal apologies from the Government. The Government has indicated that – as noted by the Committee in its previous comment – in April 1998 the Shimonoseki Branch of the Yamaguchi District Court (the lowest of three tiers of courts) ordered the Government to pay consolation money to each of three plaintiffs who had brought lawsuits in Japan, as state compensation for failure to legislate a necessary law, but that this was appealed to the Hiroshima High Court in May 1998, and is still under examination. The Government states that the reasoning behind the earlier ruling was rejected by the Tokyo High Court in another lawsuit in August 1999. In three of the cases mentioned by the two unions which are pending in high courts, lower courts ruled in favour of the State; the five others are still under examination by district courts. The Committee requests the Government to keep it informed of developments regarding these lawsuits.

9. In another communication, the Netherlands Trade Union Confederation (FNV), by a letter of 23 November 1999, submitted documentation provided to it by the "Foundation of Japanese Honorary Debts". The Government has questioned the validity of this communication as the information did not originate with the workers' organization; but the Committee recalls that it has always considered that information provided by trade unions in these circumstances falls within the bounds of its practice in dealing with workers' and employers' comments. The FNV communication indicates that Japan has not provided compensation to women of Dutch nationality who were forced to become "comfort women". The Government has stated in reply that as the identification of wartime "comfort women" in the Netherlands has not been carried out by the Dutch authorities, the Government of Japan and the AWF, "in consultation with the Dutch people concerned", have explored projects to be implemented in the Netherlands, including, for instance, the provision of goods and services in the medical and social welfare areas. The Government also refers to expressions of appreciation for these actions made by the Dutch Prime Minister during Japan-Netherlands summit talks on 21 February 2000.

10. The Committee notes the considerable number of claims and actions still under way. In view of the fact that many of the claimants do not consider the AWF compensation to be acceptable, the Committee hopes the Government will find an alternative way, in consultation with them and the organizations which represent them.

to compensate the victims before it is too late to do so, in a manner that will meet their expectations.

II Wartime industrial forced labour

11. In this case as well the Committee has previously found forced conscription of many thousands of persons from other Asian countries to work in Japanese wartime factories to have been contrary to the Convention. The Government indicates in its response that all legal claims were settled by treaties after the Second World War, and by formal apologies by the Government, and that no further individual claims are admissible. It has detailed relations with several governments in this regard, including China, Indonesia, the Republic of Korea and the United States. The Government indicates that in this case as well, court actions are proceeding in Japan, and that seven cases raised by Korean nationals and seven others by Chinese nationals are in the courts. In two cases by Korean nationals and two by Chinese nationals, the lower courts ruled in favour of the Government and appeals are now pending, while the ten others are being examined by district courts. Three other cases raised by Korean nationals have been settled out of court, without any recognition of legal responsibility by the companies concerned pertaining to the conscription of these persons.

12. The Committee understands, however, that during its session a settlement was reached in one of the pending court cases, by which the contracting firm Kajima agreed to establish a 500 million yen (approximately \$4.5 million) fund to compensate survivors and relatives of conscripted Chinese labourers who died at its Hanaoka copper mine during the war, with the fund to be administered by the Chinese Red Cross. The Committee requests the Government to provide additional information on this case, and its impact on similar lawsuits against other firms.

13. The Committee notes that the two Korean trade unions which submitted comments compared the response of the Government and of Japanese companies to that of governments and companies in Europe and North America that were asked to compensate former wartime slave labourers. The Government indicates that it is difficult and inappropriate to simply compare and evaluate actions taken by different countries since they involve different historical, social and economic backgrounds and circumstances. It notes, for instance, that Germany did not conclude any treaties which covered questions of reparations, property and claims in a comprehensive manner, because it was divided into two countries after the war.

14. The Kanto Regional Council of the All Japan Shipbuilding and Engineering Union submitted comments in a letter of 1 October 1999, referring to actions taken in the US State of California. It indicates that the state adopted a law in June 1999 which extended the statute of limitations for forced labour victims from the Second World War to bring claims. The Government indicates in response that Japan and the United States are in full agreement that the two countries have already settled the issues concerned by the San Francisco Peace Treaty. It notes that several former United States prisoners of war filed a series of suits against Japanese companies and their subsidiaries in the United States, but that on 21 September 2000, the United States District Court for the San Francisco Division of the Northern District of California dismissed the claims on the grounds that the Peace Treaty waived all the reparations claims against Japan by the United States and its nationals. Other similar suits are pending but have not yet been

resolved. The Committee has also received information on other lawsuits which have been brought in the United States in this regard, but has not been notified of their disposition. The Engineering Union has also stated, however, that some lawsuits brought against companies in Japan which benefited from wartime forced labour (or are successors of those companies) have resulted in settlements by the companies without a recognition of liability.

15. As concerns claims by Indonesian survivors of forced labour in Thailand and Myanmar, the Government repeats that this issue has also been settled by a comprehensive treaty of peace with the Government of Indonesia. There are also indications of the conscripted labour of more than 8,000 children from Taiwan under Japanese rule in Japanese fighter plane factories. In this instance the Government indicates that the Taiwanese authorities were to deal with the issues of property and claims, but that it became impossible for Japan to deal with the issues after it normalized relations with China. The Government indicated that it provided "condolence money" under special legislation to Taiwanese people who were soldiers or civilian workers in the Japanese military.

16. In the light of the information referred to above, it is apparent that a number of former prisoners and others still feel that they were not adequately compensated by inter-state peace agreements and other arrangements, and that there are still a number of claims pending in different instances. In view of the age of the victims, and the rapid passage of time, the Committee again expresses the hope that the Government will be able to respond to claims of these persons in a way which is satisfactory both to the victims and to the Government.

Liberia (ratification: 1931)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following points:

I. In its previous observation, the Committee referred to a communication of the International Confederation of Free Trade Unions, dated 22 October 1998, by which a report on forced child labour in south-eastern Liberia was sent. That report, dated September 1998, had been prepared by Focus and the Justice and Peace Commission (JPC), two local organizations.

The Committee notes the Government's comments on that communication. It notes the report of the special investigation committee sent by the Government in May 1998 to investigate alleged forced labour in the south-eastern region. It notes that the special investigation committee did not find or establish any conclusive or physical evidence to confirm acts of forced labour in the region. The Committee however observes that the special investigation committee recommended in its report that a national committee be established to trace and reunite displaced women and children that were taken captive during the war and also that a committee be sent to investigate allegations of forced labour and hostage situations particularly in some parts of Grand Kru and Nimba Country. The investigation committee further recommended that, in order to enhance the National Reconciliation and Reunification Programmes, "local authorities should be directed to encourage their citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment for appropriate investigation and corrective measures".

In their report, Focus and JPC found that the case of forced labour was "a spillover of the gross abuses that characterized the civil war" and that it was a common practice of ex-combatants (mainly former commanders) of former warring factions who chose to take

advantage of the extremely difficult economic situation in the region. The report stated that there are practices of exploitative and forced labour and captivity taking place in that part of the country, chiefly in the Government Camp area in Sinoe Country. The report also mentioned chief Solomon Moses (Chief Solo) in Sinoe Country and Chief Gonda, in Grand Gedeh Country, as alleged perpetrators, both of them being heads of Joint Security Forces. It mentioned the difficult situation of socially abandoned children who had to fend for themselves and orphans who, although in the care of some adult, "due to financial difficulties were made to perform tasks against their will" so as to "raise funds for their support". The Committee notes that in their recommendations, Focus and JPC urge the Government to address the plight of children in the south-east, especially that of children held hostage by adults and used as a source of forced and captive labour.

The Committee notes that both reports found that the south-eastern part of the country was in a grave humanitarian crisis and an extreme state of poverty and that any reported situations of exploitation were due to the consequences of the war. It further notes from the Government's latest report that the region is cut off to a very large extent from the rest of the country because of the bad state of the roads, that the limited resources available do not allow for the immediate building of the needed hospitals and schools and that because of the economic situation in the region, there are hardly any alternatives to farming, small-scale mining and other activities which require massive and cheap labour.

The Committee understands from the documents before it that the Government as well as Focus and JPC have independently sent teams to investigate the situation and report on it. It hopes that the Government will encourage joint efforts and cooperation between governmental bodies and non-governmental organizations at all levels with a view to the effective elimination of all forms of compulsory labour, including that of children, and that the Government will supply full information on measures taken to this end, as well as on action taken on the following recommendations of the special investigation committee:

- (a) the establishment of a national committee to trace and reunite displaced women and children taken captive during the war;
- (b) the sending of a committee to investigate allegations of forced labour and hostage situations particularly in Grand Kru and Nimba Country;
- (c) directing local authorities to encourage the citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment, for appropriate investigation and corrective measures, in the framework of the National Reconciliation and Reunification Programmes.

The Committee furthermore hopes that the Government will take specific action to investigate the situation in the south-east as regards practices of forced labour, including allegations that children are held hostage by adults as captive labour, and more particularly the allegations that forced labour was being imposed in the Government Camp area in Sinoe Country and by heads of Joint Security Forces in Sinoe Country and Grand Gedeh Country. The Committee hopes that the Government will supply full information on the action taken and the results.

II. *Article 25 of the Convention.* The Committee recalls that under *Article 25* of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence and it shall be an obligation on the State to ensure that the penalties imposed are really adequate and are strictly enforced. It notes from the Government's latest report that the use of forced or compulsory labour is to be held a crime. The Committee hopes that the necessary action to give effect to *Article 25* of the Convention will be completed in the near future and that the Government will send the text of the Act as soon as it is adopted.

The Committee is addressing a direct request to the Government on other points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritania (ratification: 1961)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1, paragraph 1, and Article 2, paragraph 1, of the Convention. 1. The Committee noted that a communication from the World Confederation of Labour (WCL) was received in October 1997, which included an observation on the application of the Convention. According to that observation, the Convention is violated through the persistence of practices equivalent to slavery, despite the Declaration of 1980 abolishing slavery. This communication was transmitted to the Government in November 1997 for comment. The Committee again requests the Government to transmit its comments on the above communication in its next report.

2. In this respect, further to its previous comments, the Committee recalls that it has been examining issues related to the condition of former slaves and the persistence of former slave-like relations for several years. The Committee noted that slavery had been abolished by several texts. It also noted that, according to the Government, isolated cases of its persistence in practice might still be found. In this respect, the Committee notes a transaction which occurred in December 1997 in Timzine, in the Kobony Department, in the region of Hodh el Gharby, which consisted of the cession of 40 persons to pay a debt after a death. The transaction took place in the presence of a *cadi*. The purchaser freed the persons who had been acquired in this manner. The Committee welcomes this act of liberation. However, it wishes to express once again its great concern at the persistence of such situations.

3. The Committee considers that persons who are in a situation in which their relations are similar to those of a slave to a master, and who are not at liberty to decide on their own course of action, are, due to these conditions, in a situation in which they perform work for which they have not offered themselves of their own free will and which could not arise under a freely concluded contract of employment. The Committee notes that forced labour is prohibited by the Labour Code, but that the Code only applies to relations between employers and workers. The Committee requests the Government to take measures to extend the prohibition on any form of forced labour to work relationships such as may have persisted from historic times. For example, measures could be taken to extend the prohibition of forced labour contained in section 3 of the Labour Code to *all* forms of work relationships, even where they are not covered by a contract. It would also be possible to provide explicitly that, subject to the exceptions admitted by the Convention, *any* situation in which individuals provide work or a service for which they have not offered themselves of their own free will is illegal, may be brought before a civil court and is punishable as a penal offence, in accordance with *Article 25* of the Convention. The Committee requests the Government to provide information in its next report on the measures envisaged to give effect to the Convention on this point.

4. Following the adoption of Act No. 71059 of 25 February 1971 issuing rules to organize civil protection, which limits the powers to requisition labour to specific exceptional circumstances, corresponding to the definition of cases of emergency set out in *Article 2(d)* of the Convention, the Committee requested the Government to take measures to repeal the Ordinance of 1962 (which confers very wide powers on local leaders to requisition labour). The Committee noted in a recent comment the Government's statement that the above text had not yet been amended. The Committee concludes that the Ordinance is still in force: for reasons of legal security and in order to ensure the observance of the

Convention, it requests the Government to take steps to explicitly repeal the above text in the near future and to provide information in its next report on the measures adopted in this respect.

5. The Committee noted that Act No. 70-029 of 23 January 1970 provides for the possibility of requisitioning labour outside the cases of emergency admitted by the Convention. Under sections 1 and 2 of the above Act, various categories of individuals may be required to exercise their functions when circumstances so require, particularly to ensure the functioning of a service that is considered to be essential to meet a need of the country or the population. The Committee requests the Government to take measures to limit recourse to the powers of requisitioning set out in the Act to cases of emergency, as defined in *Article 2, paragraph 2(d)*, of the Convention. The Committee requests the Government to indicate the measures which have been taken to amend this Act in order to bring the legislation fully into conformity with the Convention on this point.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Myanmar (ratification: 1955)

1. The Committee notes that the Government has not supplied a report on the application of the Convention. Following the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee has, however, taken note of the following information:

- the information presented by the Government to the Director-General of the ILO in communications dated 21 January, 20 March, 27 May, 29 October (as supplemented subsequently), and 3, 15 and 17 November 2000;

- the information submitted to, and the discussions held in, the Governing Body of the ILO at its 277th and 279th Sessions in March and November 2000;

- the information and discussion at the International Labour Conference at its 88th Session (May-June 2000);

- the resolution adopted by the International Labour Conference at its 88th Session concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar to secure compliance with the recommendations of the Commission of Inquiry, and the entry into effect of those measures on 30 November 2000, following consideration of the matter by the Governing Body at its 279th Session (November 2000);

- the resolutions adopted by the General Assembly of the United Nations at its 54th Session (17 December 1999) and by the United Nations Commission on Human Rights at its 56th Session (March-April 2000) on the situation of human rights in Myanmar (extracts in International Labour Conference, 88th Session, Geneva, 2000, *Provisional Record* No. 4, Annex III);

- the second report of the Director-General of the ILO to the members of the Governing Body on measures taken by the Government of Myanmar, dated 25 February 2000;

- the interim report prepared by judge Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, dated 22 August 2000 [UN document A/55/359]; and the note by the Secretary-General

of the United Nations on the same subject, dated 20 October 2000 [UN document A/55/509];

the reports of the ILO technical cooperation missions to Myanmar of May 2000 [ILC, 88th Session, Geneva, 2000, *Provisional Record* No. 8] and October 2000 [GB.279.6.1 and Add.1];

a communication dated 15 November 2000 in which the International Confederation of Free Trade Unions submitted to the ILO voluminous documentation referring to the imposition of forced labour in Myanmar during the period June-November 2000, a copy of which was sent to the Government for such comments as it may wish to present;

a press release issued on 17 November 2000 by the Ministry of Foreign Affairs of the Union of Myanmar in Yangon, and an information sheet issued by the Myanmar Information Committee in Yangon on a press conference held on 18 November 2000 by the Government on the decision of the ILO Governing Body to activate measures on the subject of Myanmar.

2. Information available on the observance of the Convention by the Government of Myanmar will be discussed in three parts, dealing with: (i) the amendment of legislation; (ii) any measures taken by the Government to stop the exaction in practice of forced or compulsory labour and information available on actual practice; (iii) the enforcement of penalties which may be imposed under the Penal Code for the exaction of forced or compulsory labour.

I. Amendment of legislation

3. In paragraph 470 of its report of 2 July 1998, the Commission of Inquiry noted:

that section 11(d), read together with section 8(1)(g), (n) and (o) of the Village Act, as well as section 9(b) of the Towns Act provide for the exaction of work or services from any person residing in a village tract or in a town ward, that is, work or services for which the said person has not offered himself or herself voluntarily, and that failure to comply with a requisition made under section 11(d) of the Village Act or section 9(b) of the Towns Act is punishable with penal sanctions under section 12 of the Village Act or section 9(a) of the Towns Act. Thus, these Acts provide for the exaction of "forced or compulsory labour" within the definition of *Article 2(1) of the Convention*.

The Commission of Inquiry further noted that the wide powers to requisition labour and services under these provisions do not come under any of the exceptions listed in *Article 2, paragraph 2*, of the Convention and are entirely incompatible with the Convention. Recalling that the amendment of these provisions had been promised by the Government for over 30 years, the Commission urged the Government to take the necessary steps to ensure that the Village Act and the Towns Act be brought into line with the Convention without further delay, and at the very latest by 1 May 1999 (paragraph 539(a) of the Commission's report).

4. In its previous observation, the Committee noted that by the end of November 1999, neither the Village Act nor the Towns Act had been amended, nor had any draft law proposed or under consideration for that purpose been brought to the knowledge of the Committee. However, an "Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907 and the Village Act, 1907" (No. 1/99) was issued by the Government on 14 May 1999, which in fact still reserved the exercise of powers

under the relevant provisions of the Village Act and the Towns Act which remain incompatible with the requirements of the Convention.

5. The Committee notes from the report of the October 2000 ILO technical cooperation mission to Myanmar (GB.279.6/1, paragraphs 9 and 10, Annexes 13 and 19) that a draft text providing for the amendment of the Village Act and the Towns Act through an amendment of Order No. 1/99 was not retained by the Government. However, the same report (in Annex 19) reproduces the English text of an "Order Supplementary Order No. 1/99" made by the Ministry of Home Affairs under the direction of the State Peace and Development Council on 27 October 2000 which modifies Order No. 1/99 so as to order "responsible persons including members of the local authorities, members of the armed forces" etc. "not to requisition work or service notwithstanding anything contained" in the relevant sections of the Towns and Village Acts, except in cases of emergency as defined in *Article 2(2)(d)* of the Convention (GB.279.6/1, Annex 19). The Burmese text of this Order of 27 October, which was to be published in the *Myanmar Gazette*, has not yet been supplied to the ILO.

6. The Committee observes that the amendment of the Village and Towns Acts sought by the Commission of Inquiry as well as the present Committee and promised by the Government for many years has not yet been made. It again expresses the hope that the Village Act and the Towns Act will at last be brought into conformity with the Convention.

7. The Committee nevertheless notes that Order No. 1/99 as supplemented by the Order of 27 October 2000 could provide a statutory basis for ensuring compliance with the Convention in practice, if given effect bona fide not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities under the Acts. This, in the view of the Committee, calls for further measures to be undertaken, as indicated by the Commission of Inquiry in its recommendations in paragraph 539(b) of its report.

II. Measures to stop the exaction in practice of forced or compulsory labour and information available on actual practice

1. Measures to stop the exaction in practice of forced or compulsory labour

8. In its recommendations in paragraph 539(b) of its report of July 1998, the Commission of Inquiry indicated that steps to ensure that in actual practice no more forced or compulsory labour be imposed by the authorities, in particular the military, were:

...all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 [of the Commission's report] to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment, it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage

labour for the public activities which are today based on forced and unpaid labour is also required —

9. The Committee notes from the report of the October 2000 ILO technical cooperation mission to Myanmar, the suggestion made by the mission of a Supplementary Order or directive from the Office of the Chairman of the State Peace and Development Council concerning requisition of labour or services (GB.279.6/1, Annex 13). The suggested text was to order all state authorities, including military, police and civilian authorities and their officers, not to requisition persons to provide labour or services for any purpose, nor to order others to requisition such labour or services, regardless of whether or not payment is made for said labour or services, except in cases of emergency as defined in *Article 2(2)(d)* of the Convention. The suggested prohibition was to include but not be limited to the requisition of labour or services for the following purposes:

- (a) portering for the military (or other military paramilitary groups, for military campaigns or regular patrols);
- (b) construction or repair of military camps facilities;
- (c) other support for camps (such as guides, messengers, cooks, cleaners, etc.);
- (d) income generation by individuals or groups (including work in army-owned agricultural and industrial projects);
- (e) national or local infrastructure projects (including roads, railways, dams, etc.);
- (f) cleaning/beautification of rural or urban areas.

Similar prohibitions were to apply to the requisition of materials or provisions of any kind and to demands of money except where due to the State or to a municipal or town committee under relevant legislation. Furthermore, the suggested text was to provide that if any state authority or its officers requires labour, services, materials or provisions of any kind and for any purpose, they must make prior budgetary arrangements to obtain these by a public tender process or by providing market rates to persons wishing to supply these services, materials or provisions voluntarily, or wishing to offer their labour.

10. The Committee notes that the text suggested by the mission was not adopted, but that the English versions of several instructions dated 27 and 28 October 2000 and 1 November 2000 were forwarded to the ILO after the departure of the mission and reproduced in addenda to the mission's report (GB.279.6/1 Add.1 (Rev.1) and Add.2).

11. The instruction dated 27 October 2000 "Prohibiting Requisition of Forced Labour" is signed for the Director-General of the Police Force and addressed to all units of the police force. The instruction dated 28 October 2000 on the same subject is addressed by the Director-General of the General Administration Department of the Ministry of Home Affairs to all State/Divisional Commissioners and General Administration Departments and requires, *inter alia*, Order No. 1/99 and the order supplementing it to be displayed separately on noticeboards of all the levels of peace and development councils as well as the General Administration Departments.

12. The instruction dated 1 November 2000 "Prohibiting Requisition of Forced Labour" is signed at the highest level, by Secretary-1 of the State Peace and Development Council, and addressed to the Chairmen of all State and Divisional Peace and Development Councils. The latter instruction thus reaches beyond institutions that

come under the authority of the Ministry of Home Affairs. It is, however, primarily directed to the enforcement of Order No. 1/99 and the Order of 27 October 2000 supplementing it, which are limited in scope to the requisition of forced labour under the Village Act and the Towns Act, i.e. not by civilian or military state officers but by local authorities, who may requisition labour under the Acts when called upon to provide assistance to civilian and military state officers. Nevertheless, the instruction dated 1 November interprets the Supplementing Order of 27 October 2000 as follows:

2. — The Supplementing Order renders the requisition of forced labour illegal and stipulates that it is an offence under the existing laws of the Union of Myanmar. Responsible persons, including the local authorities, members of the armed forces, members of the police force and other public service personnel are also prohibited not to requisition forced labour and are instructed to supervise so that there shall be no forced labour.

It would appear to the Committee that a bona fide application of this prohibition should cover the typical case of members of the armed forces who order local authorities to provide labourers, even if the manner of complying with such order – through requisition or hiring of labourers or otherwise – is left to the local authorities.

13. The instruction dated 1 November 2000 continues as follows:

3. Therefore, it is hereby directed that the state and divisional peace and development councils shall issue necessary instructions to the relevant district and township peace and development councils to strictly abide by the prohibitions contained in Order No. 1/99 and the Supplementing Order of the Ministry of Home Affairs and also to effectively supervise to ensure that there shall be no forced labour within their respective jurisdictions.

4. Responsible persons, including members of the local authorities, members of the armed forces, members of the police force and other public service personnel who fail to abide by the said Order No. 1/99 and the Supplementing Order shall be prosecuted under section 174 of the Penal Code or any other existing laws.

It would appear to the Committee that again, as set out in paragraph 12 above, a bona fide application of the instruction would include, in the scope of point 4 of the instruction, members of the armed forces who order local authorities to supply labour.

14. It remains to be seen whether the “necessary instructions” yet to be issued by the state and divisional peace and development councils under point 3 of the instruction of 1 November will contain the kind of details necessary for a feasible implementation. Such details were set out by the Commission of Inquiry in paragraph 539(b) of its report and included by the October 2000 technical cooperation mission in its suggestion mentioned in paragraph 9 above.

15. The three instructions forwarded so far to the ILO do not yet contain any positive indication on the manner in which authorities that have been used to rely on forced and unpaid labour contributions of the population are hereafter to make realistic provision for the labour and services they may require.

16. Furthermore, the three instructions do not spell out the various forms of forced labour found by the Commission of Inquiry and this Committee to be mainly imposed in practice, as listed in paragraph 9 above. In this regard, the Committee recalls that most of the forms of forced labour or services requisitioned concerned the military. The Committee notes that “members of the armed forces” are specifically included among the responsible persons listed in point 4 of the instruction dated 1 November 2000 (quoted in paragraph 13 above). However, in point 3 of the same instruction, the order to

issue the necessary further – and, hopefully, more detailed – instructions is addressed to the state and divisional peace and development councils (which in fact include officers of the armed forces), but not to the regional commanders of the armed forces in their military capacity.

17. In the absence of specific and concrete instructions to the civilian and military authorities containing a description of the various forms and manners of exaction of forced labour, the application of the provisions adopted so far turns upon the interpretation in practice of the notion of “forced labour”. This cannot be taken for granted, as shown by the various Burmese terms used sometimes when labour was exacted from the population – including “loh ah pay”, “voluntary” or “donated” labour. The need for clarity on the point is underscored by the Government’s recurrent attempts to link the pervasive exaction of labour and services by mainly military authorities to merit which may be gained in the Buddhist religion from spontaneously offered help. The Commission of Inquiry recalled in paragraph 539(c) of its report that “the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government’s statements” was “all the more likely to occur in actual recruitment by local or military officials”.

18. Thus, clear instructions are still required to indicate to all officials concerned, including officers at all levels of the armed forces, both the kinds of tasks for which the requisition of labour is prohibited, and the manner in which the same tasks are henceforth to be performed. The Committee hopes that the necessary detailed instructions will soon be issued, and that, in the words of paragraph 539(b) of the Commission of Inquiry’s report, provision will also be made for “the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour”.

B. Information available on actual practice

(a) The practice August 1998 to December 1999

19. In his reports dated 21 May 1999 and 25 February 2000 to the members of the Governing Body, the Director-General indicated that all information on actual practice that was received (from workers’ and employers’ organizations, intergovernmental organizations and governments of member States of the ILO) in reply to his requests, referred to continued widespread use of forced labour by the authorities, in particular by the military.

(b) Information on the practice up to November 2000

20. In its communication dated 15 November 2000, the ICFTU refers to the persistence of severe breaches of the Convention by the military authorities. Documentary appendices enclosed by the ICFTU represent over 1,000 pages drawn from over 20 different sources and include reports, interviews of victims; over 300 forced labour orders, photographs, video recordings and other material. A few events described therein took place in the first half of the year 2000; an overwhelmingly large proportion of the documents concerns the period June to November 2000.

21. An essential part of the ICFTU submission consists of hundreds of “forced labour orders”, issued mainly by the army but also by armed groups under its control and

elements of the local administration. As stated by the ICFTU, these are similar in kind, shape and contents to the orders already examined by the Commission of Inquiry and the regular ILO supervisory mechanisms and found by same to be authentic. Documentary materials submitted refer to the persistence on a large scale of forced portering, including by women, and the murder of forced porters no longer able to carry their burden. In addition to forced portering, all other forced labour practices identified previously by the Commission of Inquiry are referred to for the period June to November 2000. A great number of specific reported instances include forced labour for the building and maintenance of roads, bridges, railroads, water canals, dikes, dams and reservoirs, as well as for the building, repair, maintenance and servicing of army camps; and the requisition of labour as well as seeds, fertilizer, materials and equipment for army-held agricultural land, forests and installations.

22. As indicated above, copies of the ICFTU communication of 15 November 2000, including the voluminous documentation submitted, were sent to the Government for such comments as it may wish to present.

III. Enforcement

23. In paragraph 539(c) of its recommendations the Commission of Inquiry urged the Government to take the necessary steps to ensure:

that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced labour or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty.

24. In practice, no action whatsoever under section 374 of the Penal Code has so far been brought to the knowledge of the Committee.

25. The Committee notes that point 4 of the instruction dated 1 November 2000 from the State Peace and Development Council to All State and Divisional Peace and Development Councils, reproduced in paragraph 13, provides for the prosecution of "responsible persons" under section 374 of the Penal Code. Similar clauses are included in point 3 of the instruction dated 27 October, and point 6 of the instruction dated 28 October, referred to in paragraph 11 above. Moreover, under points 4 to 6 of the instruction dated 27 October 2000, addressed by the Director-General of the Police Force to all units of the police force:

4. If any affected person files a verbal or written complaint to the police station of having been forced to contribute labour, the latter shall record the complaint in Forms A and B of the police station and send the accused for prosecution under section 374 of the Penal Code.

5. It is hereby directed that the police stations and units concerned at various levels shall be further instructed to make sure their strict compliance with the said Order as well as to supervise so that there shall be no requisition of forced labour. A copy of the Order Supplementing Order No. 1/99 issued by the Ministry of Home Affairs on 27 October 2000 is enclosed herewith.

6. It is instructed to acknowledge receipt of this directive and to report back actions taken on the matter.

26. With regard to point 4 of the latter instruction (dated 27 October 2000) the Committee hopes that prosecutions under section 374 of the Penal Code will be brought

by the law enforcement agencies on their own initiative, without waiting for complaints by the victims, who may not consider it expedient to denounce the "responsible persons" to the police. The Committee hopes that in commenting on indications that the imposition of forced labour has continued beyond October 2000, the Government will also report on any concrete action taken under section 374 of the Penal Code.

27. The Committee has noted the assurance, in the Government's letter dated 29 October 2000 to the Director-General of the ILO, of the "political will to ensure that there is no forced labour in Myanmar, both in law and in practice". It also has taken due note of the Order Supplementing Order No. 1/99 and the three instructions issued between 27 October and 1 November 2000, and of the view of the Employer members of the Governing Body at its 279th Session (November 2000) that this was "too little too late". At a press conference held 18 November 2000 in Yangon on the decision of the Governing Body of the ILO to activate measures on the subject of Myanmar, the Government indicated that it would no longer cooperate with the ILO in relation to the Forced Labour Convention, 1930 (No. 29), but that it would continue to take steps to prevent forced labour, as this was its policy. The Committee hopes that the Government will thus at last take the necessary measures to ensure the observance in law as well as in practice of the Convention, a basic human rights instrument freely ratified by Myanmar. It also hopes that the Government, which had failed to take part in the proceedings before the Commission of Inquiry, will avail itself of the opportunity to present its views and progress in reporting on the application of the Convention, in conformity with its obligations under article 22 of the ILO Constitution.

[The Government is asked to report in detail in 2001.]

Netherlands (ratification: 1933)

Article 2(2)(a) of the Convention. With reference to its earlier comments concerning the use of conscripts for non-military activities, the Committee notes with satisfaction the Government's confirmation in its report that compulsory national service and the practice in question concerning the position of conscripts have ended.

Saudi Arabia (ratification: 1978)

The Committee notes the recent Government report and response received respectively on 31 July 2000 and 6 November 2000.

Article 25 of the Convention

Penalties

1. The Committee for some ten years has raised its concern about the failure of the Government to comply with *Article 25 of the Convention*, which requires that illegal exaction of forced labour shall be punishable as a penal offence. This comment has been made in respect of special problems involving migrant workers as discussed hereunder. The Government has consistently maintained that forced or compulsory labour would be regarded as a constraint or oppression under the Shari'a and that, if a case was brought to a tribunal, the judge in applying the Shari'a may subject the offender to penalties in the way of fines, jail or other sanctions at the discretion of the judge. In its reports, the

Government maintains that this is sufficient to comply with the Convention as the secular law is thereby in conformity with the Convention.

2. The Committee yet again indicates that the absence of a secular law, such as a code, which specifically provides for punishment of forced labour as a penal offence means that the provisions of the Convention are not fulfilled. *Article 25* requires that a member State have a specific law which both describes the exaction of forced labour which is forbidden and also prescribes a penalty for its exaction. The broad and non-specific application of the Shari'a, coupled with a possible judicial sanction at the broad and unlimited discretion of the judge, does not fulfil the requirements and purpose of the Article. The purpose of *Article 25* is to act overtly as a preventative measure and also as a punitive measure which is known and can be implemented.

3. The Committee therefore again requests that the Government take measures in secular law, for example by way of a code, to provide for penal sanctions for the imposition of forced labour in order to ensure compliance with the Convention. In addition, to the extent that the Government indicates that such matters may be raised in a tribunal, the Committee asks the Government to provide details of any cases in which a tribunal has found a person responsible for forced labour, including any sanctions imposed by a judge, and also to transmit copies of such decisions.

Migrant workers

4. The Committee has raised for some years the problem of migrant workers and in particular agricultural and domestic workers. As indicated above, this problem is linked to the points made by the Committee in respect of the absence of a penalty provision as described above. The Committee has previously noted that the Labour Code does not extend to agricultural workers and domestic workers, which has particular significance for migrants who often work in those jobs. The lack of protection for such migrant workers exposes them to exploitation in their working conditions, such as retention of their passports by their employers which in turn deprives them of their freedom of movement to leave the country or change their employment.

5. The Committee has previously noted that, according to information submitted by Anti-Slavery International to the United Nations Working Group on Contemporary Forms of Slavery, it was a common practice by employers to retain the passports of domestic workers in particular, and that such workers had to continue in the service of the employer, sometimes without remuneration, with excessive hours and occasionally subject to physical mistreatment or, for women, even sexual abuse. The Government indicated in an earlier report that it strongly refuted these allegations as going "beyond logic and reality". The Committee takes note of comments recently communicated by the International Confederation of Arab Trade Unions (ICATU) of 15 May 2000, in which reference is made again to the practice of retaining passports of migrant workers by employers which still continues. The Government in its response of 6 November 2000 indicates that, as the result of the previous comments made by the Committee on this topic, it adopted, through Decision No. 166 of 12 July 2000 of the Council of Ministers, a "Regulation governing the relationship between employers and migrant workers". The Committee notes with interest that according to section 3 of the Regulation, "migrant workers may keep their passports or the passports of members of their families and may be authorized to move within the Kingdom as long as they have a

valid residence permit". The Committee also notes that section 6 provides for the creation of a rapid mechanism for the examination of conflicts which may arise and for their settlement by the competent authority.

6. The Committee also takes note of the decision of the Government of Indonesia of January 1999 to suspend the migration of workers to Saudi Arabia which was linked to the number of reported cases of torture, rape, non-payment of wages and deprivation of liberty of Indonesian workers in Saudi Arabia.

7. In a summary on the point, the Committee hopes that the Government will provide details regarding the sanctions which may be imposed in case of non-observance of the provisions of the Regulation governing the relationship between employers and migrant workers, and that it will communicate further information on the dispute settlement mechanism which is provided for in section 6 of the Regulation.

Sierra Leone (ratification: 1961)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

In its comments made for a number of years, the Committee asked the Government to repeal or amend section 8(h) of the Chiefdom Councils Act (Cap. 61) under which compulsory cultivation may be imposed on natives. The Committee previously noted the Government's statement that the above-mentioned section is not in conformity with article 9 of the Constitution and would be held unenforceable. The Committee also noted the Government's indication that section 8(h) was not applied in practice and that information on any amendment of this section would be provided. In its report received in 1995, the Government stated that measures to change section 8(h) were evident in the new proposed Constitution.

The Committee therefore trusts that measures will be taken in the near future in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice. It asks the Government to provide information on any progress made in this regard.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sri Lanka (ratification: 1950)

The Committee notes the information provided by the Government in reply to its earlier comments.

Child exploitation

In its earlier comments the Committee referred to allegations of child labour exploitation in various sectors, such as domestic service, shops, private coaches, tourist industry, etc. It notes with interest the information on measures taken by the Government to combat child labour and child abuse, and in particular the new amendments to the Penal Code (Act No. 29 of 1998) which have enhanced penalties for the exploitation of children, as well as various measures taken with a view to strengthening the enforcement machinery, such as the appointment of more labour officers and Assistant Commissioners of Labour and setting up of regional committees to coordinate activities pertaining to child labour. The Committee also notes from the Government's report that

a wide range of activities has been implemented with the assistance of the ILO's International Programme for the Elimination of Child Labour (IPEC) in Sri Lanka. It further notes the Government's indication in the report concerning the amendment of the Employment of Women, Young Persons and Children Act, No. 47 of 1956, which has now imposed a total prohibition on employing persons under the age of 14.

1. The Committee would be grateful if the Government would supply in its next report further information on the progress achieved in its efforts to improve the legislative support to combat child exploitation and to ensure that exaction of forced labour is punished as a penal offence and that the penalties imposed by law are really adequate and strictly enforced, as required by *Article 25 of the Convention*. Please provide information on the manner in which the amendments to the Penal Code introduced by Act No. 29 of 1998 referred to above and by Act No. 22 of 1995 are applied in practice, including the number and extent of penalties imposed in prosecutions which have proceeded under it. Please also supply information on the activities of regional committees referred to above, which, according to the report, are being reviewed and monitored at the Women and Children's Affairs Division of the Department of Labour, as well as extracts from any inspection or other reports – for example, of the National Child Protection Authority set up under Act No. 50 of 1958 – on practical difficulties in the application of the Convention in this respect.

2. The Committee notes the Government's confirmation in the report that domestic child workers are covered by the laws on child labour. The Committee would be grateful if the Government would continue to provide, in its future reports, information on any measures to protect child domestic servants from forced labour and to combat child servitude.

Emergency regulations

3. In its earlier comments the Committee referred to the state of emergency declared on 20 June 1989 under the Public Security Ordinance, 1947, and the powers of the President under section 10 of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 1 of 1989. The Committee has noted the Government's repeated statement that, in view of the ongoing war in the country, it is imperative that the provisions of the Emergency Regulations remain in force, in order to prevent any breakdown in the national security and to ensure the maintenance of essential services. Referring to paragraph 36 of its 1979 General Survey on the abolition of forced labour, the Committee wishes to point out once again that recourse to compulsory labour under emergency powers should not only be limited to circumstances which would endanger the existence or well-being of the whole or part of the population, but that it should also be clear from the legislation that the power to exact labour is limited in extent and duration to what is strictly required to cope with the said circumstances. The Committee again requests the Government to provide information on measures taken or envisaged in order to bring the legislation into conformity with the Convention on this point.

Compulsory public service

4. The Committee has noted the Government's repeated statement in the report that the Compulsory Public Service Act, No. 70 of 1961, sections 3(1), 4(1)(c) and 4(5), imposing on graduates compulsory public service of up to five years, had led to no

prosecutions. It reiterates its hope that the necessary measures will be taken to amend or repeal the Act, in order to bring the legislation into compliance with the Convention.

5. The Committee is addressing a request directly to the Government on certain other points.

Sudan (ratification: 1957)

Abolition of slave-like practices

For several years, the Committee has been examining, in relation to the application of the Convention, information concerning the practices of abduction, trafficking and slavery affecting thousands of women and children in the southern regions of the country where an armed conflict is under way, but also in regions under government control. In its last observation, the Committee requested the Government to provide detailed information on the measures taken to eliminate these practices, particularly in cases in which they are carried out with the participation of government troops and/or its allied forces. It also requested the Government to provide information on the investigations being carried out and details of the concrete measures taken, including the cases brought to justice and the numbers of convictions, penalties and remedial measures taken.

In its conclusions adopted in June 2000, the Conference Committee on the Application of Standards, while noting the positive measures taken by the Government, including the establishment of the Committee for the Eradication of the Abduction of Women and Children (CEAWC), expressed its deep concern at continuing reports of abductions and slavery and urged the Government to pursue its efforts with vigour. It also expressed the hope that the Government's report would indicate that measures had been taken, including punishment of those responsible, for the application of the Convention in law and practice. The Conference Committee decided that its conclusions on the case of Sudan would be placed in a special paragraph of its report.

The Committee notes the observations made by the World Confederation of Labour (WCL) in a communication dated 16 October 2000, which were forwarded to the Government on 31 October 2000 so that it may make the comments thereon that it considers appropriate. The WCL's comments, based on information collected by Christian Solidarity International and Christian Solidarity Worldwide, report the persistence of practices of the abduction of women and children, accompanied by violence with the aim of reducing these persons to slavery. According to the testimony gathered by Christian Solidarity International during several missions to the country (January and May-June 2000) "the raids for slaves are undertaken mainly by militias, which are formed into PDF units and by the regular army. They are accompanied by atrocities, such as murder, torture, rape (...) and the destruction of property. The main targets of these raids are the Dinka community of northern Bahr el Ghazal and the people of the Nuba mountains". The comments also refer to the persistence of practices of slavery on a large scale in areas controlled by the Government, and particularly in the areas of Darfur and Kordofan, and to "state slavery" which, according to Christian Solidarity International, continues to exist in camps known as "peace camps" where, according to the above organization, hundreds of thousands of women and children are placed and the latter are obliged to attend Koranic schools, while the women are forced to work in private homes or on farms. Christian Solidarity Worldwide also refers to the

participation of the National Islamic Front in the abduction and enslavement of hundreds of women and children used as agricultural labour in the north of the country. The documents provided contain a large number of testimonies of persons who have been abducted and who confirm that their experience coincided with the allegations that the Committee has been receiving for many years.

The Committee notes the observations provided by the International Confederation of Free Trade Unions (ICFTU) in August 2000, a copy of which was forwarded to the Government on 18 September 2000.

The Committee notes the report by the Special Rapporteur of the Commission on Human Rights of the United Nations on the situation of human rights in Sudan (UN document A/55/374), dated 11 September 2000. "During his mission, the Special Rapporteur received general information reiterating data collected previously, indicating that between 5,000 and 15,000 Dinka children and women had been abducted and transferred to the areas of the Arab Baggaara tribesmen. Abductions allegedly occurred during raids by Baggaara armed militia, maverick groups and bandits, or members of the government-affiliated People's Democratic Front (PDF). Abductees are subsequently forced to herd cattle, work in the fields, fetch water, dig wells, do housework and perform sexual favours. Their treatment is extremely harsh: abuse, torture, rape and, at times, killing being the norm" (paragraph 30).

The Committee notes the report of the Canadian Assessment Mission, of January 2000, on human security in Sudan. The Mission was mandated by the Sudanese and Canadian Ministers of Foreign Affairs to independently investigate human rights violations, specifically in reference to allegations of slavery and slavery-like practices in Sudan. The report indicates that the core allegation of slavery in Sudan is not any sensational claim which can be criticized for inflation of numbers or ignorance of complexities, but that it is a matter of record. According to the report, it is the continued assault on lives and liberty of the Dinka people of Bahr el Ghazal by Arab raiders, the Murahleen first armed by the Government in 1985 and figuring in one way or another in the Government's current war strategies. Three perpetrators of abduction operations are cited in the report: (1) "tribal groups have been known to organize raids with 'representatives' from other Arab groups"; (2) "we believe there is formal recruitment by the Government of Sudan of militia to guard the train (which carries supplies from the north through Aweil and Wau to Bahr el Ghazal) from possible SPLA attacks. These Murahleen, who are engaged by the Government but not paid, attack villages suspected of supporting the SPLA on the way from Babanusa to Wau and back. Their booty consists not just of goods, but also of women and children and the question of abolishing the practice of abductions will remain for as long as such persons have no other pay than their 'booty'; (3) joint punitive raids carried out by the Government and the Murahleen who, under the Popular Defence Act, enjoy the status of state-sponsored militia, the People's Defence Force (PDF).

The Committee notes the Government's report and the information provided orally in June 2000 to the Conference Committee on the Application of Standards.

In its report, the Government reiterates its commitment to eradicate the abduction of women and children and to cooperate with the international community in this respect. The Committee notes that the Government has not responded to the observations made by the ICFTU in September 2000.

The Committee had previously noted the establishment in May 1999 of the Committee for the Eradication of the Abduction of Women and Children (CEAWC), with the mandate: to facilitate the safe return of affected women and children to their families as a matter of priority by giving full support (whether financially, administratively or otherwise) to the efforts of the tribal leaders concerned; to investigate reports of the abduction of women and children subjected to forced labour and similar practices; to bring to trial any persons suspected of supporting or participating in such activities and not cooperating with the CEAWC. The Committee also notes that CEAWC is also called upon to recommend measures to be taken for the eradication of this practice (the Eradication of Abduction of Women and Children Order, 1999).

In his statement to the Conference Committee on the Application of Standards (June 2000), the Government representative indicated that 1,230 cases of abduction had been addressed and that 1,258 abducted persons had been able to return to their families. Furthermore, he stated that fact-finding missions, shelters for victims of abductions and the establishment of outposts in affected areas were planned for the year 2000.

The Committee notes the report of the CEAWC for the period May 1999 to July 2000, which confirms the figure of 1,230 cases, as indicated by the Government in June 2000. However, the report indicates that 353 abductees have returned to their homes, in contrast to the figure of 1,258 cited by the Government representative in the Conference Committee. The report of the Special Rapporteur of the Commission on Human Rights also cites the figure of 353 children who have been able to be returned to their families out of the 1,230 documented cases of abducted children who were traced and retrieved in field missions (A/53/374, paragraph 32). The Committee requests the Government to provide explanations concerning the differences in these figures for the number of persons who have been able to return home, as well as to provide copies of the future reports of the CEAWC on its activity.

With regard to the effectiveness of CEAWC the Committee notes that:

according to the Special Rapporteur of the Commission on Human Rights, "despite the strong commitment shown by some members of the CEAWC, the process had been inordinately slow" and expensive. According to the Special Rapporteur, "no serious investigation had taken place of the root causes of this practice, possibly because of a lack of engagement of the top political leadership in the process or a reluctance to cooperate" (paragraphs 33 to 35). He also expressed his dismay at a further attack which had occurred after the establishment of the CEAWC: "on 21 February 2000, PDF allegedly attacked several villages in eastern Aweil and Twic counties, northern Bahr el Ghazal, killing 16 civilians, abducting some 300 women and children";

according to the conclusions of the Canadian Assessment Mission, "the creation of CEAWC is a first step, but so far an insufficient one, towards ending a practice, abduction into a condition of being owned by another person, which must be stopped";

the ICFTU in its observations, based on information compiled by Anti-Slavery International, reports the figure of 14,000 people originating in southern Sudan and now located in southern Darfur or southern Kordofan. Many of them, who are women and children, belong to the Dinka ethnic group and had been abducted from

Bahr el Ghazal. Some are still subjected to forced labour and a very few of them, of the hundreds who have been freed, have been able to return home.

The information from Anti-Slavery International submitted by the ICFTU also refers to the militia accompanying the supply train for government garrisons in Aweil and Wao, towns in Bahr el Ghazal situated on the railway, and states that as long as such armed groups accompany trains into Bahr el Ghazal, it seems probable that the abductions will continue. Referring to abductions on 21 February 2000, Anti-Slavery International expresses the view that no measures have been taken by the Government to end the raids, in which unarmed civilians are abducted and taken into slavery or forced labour, nor has the Government provided the necessary resources to ensure that those who are freed are reunited with their families. As a result, some children whose release has been secured and who have left the Haggaara families for whom they were working have subsequently been detained by government officials, in the absence of adequate plans to arrange their return home. It states that the CLAWC has launched appeals for substantial amounts from donors, but that the Government of Sudan does not appear to be willing to participate in the fairly high costs of repatriation operations.

Article 25 of the Convention. The Committee notes that, according to its mandate, the Committee for the Eradication of the Abduction of Women and Children (CEAWC) should bring to trial persons suspected of supporting or participating in the practices of the abduction of women and children.

The Committee notes that the Government's report does not contain information enabling it to ascertain compliance with the provisions of *Article 25* of the Convention, under the terms of which "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced".

The Committee notes sections 161, 162 and 163 of the Criminal Act, 1991, respecting abduction, kidnapping and forced labour. The Committee notes that the penalty envisaged for the exaction of forced labour is only one year of imprisonment.

The Committee notes from the indications of Anti-Slavery International communicated by the ICFTU that the CLAWC has not recorded the identity of the persons who were detaining the women and children, apparently out of concern that they might refuse to cooperate through fear of prosecutions. According to Anti-Slavery International, this would have the effect of ensuring impunity for those who exploit forced labour.

The Committee requests the Government to indicate the provisions of the Criminal Act under which persons found guilty of the abduction and imposition of forced labour will be charged and the procedures for bringing such persons to trial.

The Committee trusts that the Government will take the necessary measures to ensure that, in accordance with the Convention, penal sanctions are imposed on persons convicted of having exacted forced labour, and that it will provide copies of the court decisions made.

The Committee observes once again the convergence of allegations and the broad consensus among the bodies and agencies of the United Nations, the representative organizations of workers and non-governmental organizations concerning the continuing

existence and scope of the practices of abduction and the exaction of forced labour. The Committee observes that the situations concerned constitute gross violations of the Forced Labour Convention, 1930 (No. 29), since the victims are forced to perform work for which they have not offered themselves voluntarily, under extremely harsh conditions, and combined with ill treatment which may include torture and death. Moreover, such forced labour for most women involves the requirement to perform sexual services. While noting that a first step has been taken with the establishment of the CLAWC, the Committee considers that the scope and gravity of the problem are such that it is necessary to take urgent action that is commensurate in scope and systematic.

The Committee requests the Government to indicate the measures which have been taken to bring the Government's intention to bring an end to these practices to the notice of groups which are identified as being responsible for abductions, and it requests the Government to provide information on any further measure taken with a view to eradicating the exaction of forced labour.

The Committee hopes that the Government will be able to provide in its next report information on effective measures which have been taken to ensure compliance with the Convention.

[The Government is asked to supply full particulars to the Conference at its 89th Session and to report in detail in 2001.]

Swaziland (ratification, 1978)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Articles 161s and 261s and the 61s and 161s of the Convention. In its earlier comments the Committee referred to the Swaziland Administration Act, No. 79 of 1950, sections 10(1)(p), (q) and (r) of which provided for orders requiring compulsory cultivation, anti-soil erosion work and other works of construction and maintenance. It expressed the hope that the necessary measures would be taken to amend these provisions in order to ensure observance of the Convention.

The Committee has noted the observations on the application of the Convention made in June 1999 by the Swaziland Federation of Trade Unions (SFTU). According to the SFTU's allegations, the new Swazi Administration Order of 1998, which repealed the Swaziland Administrations Act of 1950, legalizes forced labour, slavery and exploitation with gross impunity and gives the chiefs the right to penalize non-compliance with the Order with fines, imprisonment, demolition without compensation, etc. The SFTU refers, inter alia, to sections 6, 27 and 28 of the 1998 Order, which provide for the duty of Swazis to assist the Ngwenyama and chiefs, the duty to attend before Ngwenyama, chiefs and government officers when so directed, under the threat of punishment, and the duty to obey orders requiring participation in compulsory works. The Committee has noted that these observations were transmitted to the Government in June 1999, for such comments as might be judged appropriate, and that no comments have been received from the Government so far.

The Committee has noted that the combination of sections 6, 21, 28(1)(p), (q) and (r) and 34 of the new Swazi Administration Order (No. 6 of 1998) provides for orders requiring compulsory cultivation, anti-soil erosion works and the making, maintenance and protection of roads with severe penalties for non-compliance. With reference to the comments it has been making for a number of years concerning Swaziland Administration Act, No. 79 of

1998), which contained similar provisions, the Committee observes that provisions of this kind are in serious breach of the Convention. They are not restricted in application to the circumstances contemplated in Article 262, such as cases of emergency (fire, flood, famine, earthquake, violent epidemic or epizootic diseases, etc.) or minor communal services. The Committee also refers to paragraphs 36, 37 and 74 to 83 of its 1979 General Survey on the abolition of forced labour, in which it pointed out that, in order to be compatible with the Convention, such provisions should be limited in scope to cases of a calamity or threatened calamity endangering the existence or well-being of the population, or (in case of compulsory cultivation) to circumstances of famine or a deficiency of food supplies and always on the condition that the food or produce shall remain the property of the individuals or the community producing it, or (in the full under the exemption made for minor communal services) to cases where work is limited to minor maintenance and its duration is substantially reduced.

The Committee requests the Government to take the necessary measures to amend sections 263 (para. 1a) and 1a) of the Swazi Administration Order, 1998 so as to ensure compliance with the Convention. It asks the Government to indicate the progress made in that respect and, in the meantime, to supply full information on the manner in which these provisions are being applied in practice.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

United Republic of Tanzania (ratification: 1962)

The Committee notes that the Government's report gives no further particulars in reply to its earlier comments. It must therefore repeat its previous observation on the following points:

Articles 1(1) and 2(1) and (2) of the Convention. For a number of years the Committee has been commenting on serious discrepancies between national law and practice and the provisions of the Convention.

The Committee referred in this connection to the following provisions:

article 25, paragraph 1, of the 1985 Constitution, which provides for a general obligation to work; paragraph 2 of the same article which provides that there will be no forced labour; article 29, paragraph 3(d), of the Constitution, which provides that no work shall be considered as forced labour if it is relief work that is part of compulsory nation-building initiatives, in accordance with the law, or national efforts in harnessing the contribution of everyone in the work of developing the society and national economy and ensuring success in development;

the Local Government (District Authorities) Act, 1982, the Employment Ordinance, 1952, as amended, the Human Resources Deployment Act, 1983, the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Estates Act, 1982, under which compulsory labour may be imposed, *inter alia*, by administrative authority, on the basis of a general obligation to work and for purposes of economic development;

several by-laws adopted between 1988 and 1992 under section 148 of the Local Government (District Authorities) Act, 1982, entitled "self-help and community development", "nation-building", and "enforcement of human resources deployment", which provide for an obligation to work.

The Committee expressed its concern at the institutionalized and systematic compulsion to work established in law at all levels, in the national Constitution, Acts of Parliament and district by-laws, in contradiction to Convention No. 29 and Article 1(b) of

Convention No. 105, also ratified by the United Republic of Tanzania, which prohibits the use of compulsory labour for development purposes.

The Committee previously noted the Government's indication that the Employment Ordinance No. 366 of 1952 was being revised and that a draft Bill was tabled to the Cabinet. The Government also indicated that efforts to amend the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Finances Act, 1982, were under way in the Law Reform Commission.

The Committee noted the Government's statement concerning practical difficulties encountered in the application of the Convention, which in most cases are due to application of by-laws and directives issued by local authorities imposing compulsory labour on the population.

As regards the Human Resources Deployment Act of 1983, the Government indicated that it had been repealed and replaced with the National Employment Promotion Service Act of 1999. The Committee requests the Government to supply a copy of a repealing text, as well as a copy of the new Act.

The Committee trusts that the necessary measures will be taken in the very near future to repeal or amend the provisions contrary to the Convention. It also requests the Government to provide a copy of the Employment Ordinance as soon as it is amended.

The Committee is again addressing a request on certain other points directly to the Government.

[The Government is asked to report in detail in 2001.]

Thailand (ratification: 1969)

1. The Committee notes with interest the detailed information communicated by the Government, as well as the comments on the report made by the Employers' Confederation of Thailand which were communicated by the Government. Finally, the Committee has noted with interest the implementation reports for 1997-98 and 1998-99 of the ILO's International Programme for the Elimination of Child Labour (IPEC), which is working actively in Thailand with the support of the Government and other constituents.

I. Prostitution

2. The Committee had asked in previous comments for detailed information on the application of the Prevention and Suppression of Prostitution Act of 1996. It notes from the report that the Department of Public Welfare has established a certain number of primary admittance centres and occupation development centres under the Act, and issued several decisions on how they are to work. The Government indicates that awareness-raising and other sensitization programmes have been put into place, and the groundwork laid for cooperation among various agencies. The Committee notes from the report that 59 victims of prostitution were admitted to these centres in April 2000.

3. The Committee has noted this information with interest. It requests the Government to provide information in its next report on the activities of these centres over a longer period. It also requests the Government to indicate whether some of those taking advantage of the centres are children, and what proportion of those having resort to this process can be said to have been engaged in prostitution by force or constraint.

4. The Committee also notes the initiation by IPEC of the Mekong Delta project on *trafficking of women and children*, covering six countries including Thailand, and other initiatives to prevent girls from moving into the sex trades. The IPEC report also refers to programmes to strengthen coordination at the provincial level to prevent child prostitution and cross-border trafficking, and to combat a tendency for children who are smuggled into Thailand to move into the sex trade. The Committee requests the Government to provide detailed information on the effects of these programmes and the degree to which they are being taken over by government services.

5. *Preventive measures.* The Committee also notes the information provided through IPEC concerning the initiatives which have been taken on this question. It notes in particular the awareness-raising and training projects carried out by IPEC in the north of the country, and hopes the Government will provide more information and data on these programmes and on the effect they are having. The Committee requests the Government to provide information on the preventive programmes being carried out by the Ministry of Education in particular, with IPEC assistance, which the Committee understands has been providing scholarships to a large number of girls (17,395 during 1997-99, according to information received from IPEC), with a view to giving them alternatives to the sex trade. Please indicate the current size of this programme, the number of girls benefiting from it at the time of the report, and the impact it has had.

6. The Committee notes the comments of the Employers' Confederation of Thailand on this issue, to the effect that the problem of child prostitution should be solved by adjusting the social structure to eliminate the gap between the very poor and the wealthy, and hopes the Government will continue to provide information in its future reports in this respect.

7. Please indicate what measures are being taken to reduce demand for the sex trade affecting both adults and children. The Committee notes in this respect that measures taken in any one area to reduce the vulnerability of young people to recruitment for the sex trade, ultimately will have no overall effect if demand continues at high levels.

II Other forced child labour

8. In its previous observation the Committee noted the adoption of the Labour Protection Act of 1998, section 44 of which raised the minimum age for employment to 15 years. It asked for information on whether this legislation applied to the informal sector, particularly the agricultural sector, domestic work and self-employed workers, and requested the Government to provide information on the practical application of the Act. The Committee notes from the Government's report that the legislation does not apply to the informal sector. As concerns agriculture, the Government has stated that agriculture is governed by rural customs and its own traditions, and that there are not many in this sector with an employment relationship. For domestic workers, the Government has stated that, because these workers must stay in homes, it is difficult to establish regulations concerning their conditions of work, but they are covered by laws on sexual harassment, leave and equal remuneration. Finally, the Government has stated that self-employment cannot be covered. While noting the practical difficulty of applying legislation to these sectors, the Committee recalls that the Convention applies to them. It hopes the Government will indicate what measures it is taking or has

contemplated to extend this protection to workers in the informal sector, and to prevent forced child labour also in situations where no employment relationship exists.

9. The Employers' Confederation of Thailand has referred in its observations to an action programme it has launched on "Strengthening the capacity of the Employers' Confederation of Thailand to prevent child labour through the creation of an employers' best practice guide and child-friendly employers' network and the facilitation of vocational training and apprentice schemes", with the cooperation of IPEC. The Committee welcomes this initiative and looks forward to learning more of its effects.

10. In this connection as well, the Committee notes the information in the IPEC reports on its activities more generally. Information on severe forms of child labour is often associated with that of child prostitution, but the Committee hopes the Government will indicate in its next report the measures it is taking, in cooperation with IPEC and otherwise, to eliminate forced child labour throughout the country, also in areas other than the sex trade.

III. Law enforcement

11. *Inspection.* In its previous observation the Committee noted the Police and Labour Inspection Cooperation Project, which the Government has indicated in its latest report was an ad hoc project carried out for one year only. It also referred to the Child Labour Visit Project, which was intended to help parents to locate children who had migrated to other parts of the country; and notes that through this project six children were located. The Committee also notes the information provided on the number of labour inspections during 1999, some of which uncovered under-age workers of 13 and 14 years old, resulting in warnings and a small number of prosecutions. In addition, the Government's report has also provided information on activities of prevention, protection and awareness raising, intended in particular to prevent child labour. No information has been provided on inspections which may have discovered cases of forced labour, of adults or of children, which would fall within the coverage of the present Convention, and the Committee hopes the Government will provide information on any such cases. The Committee has also noted the protective measures listed in the report, particularly the child labour exploitation hotline which has resulted in inspections, warnings and prosecutions.

12. *Prosecutions.* The Committee had asked in its previous observation for information on prosecutions and sanctions imposed for illegal employment of children and prostitution under the applicable laws. The Government has provided figures for prosecutions under the Labour Protection Act of 1998 which resulted in fines being imposed on 30 persons; two persons being punished under the Prevention and Suppression of Prostitution Act of 1996 for offences related to child prostitution and 488 for other offences related to child labour; and a number of cases prosecuted by the Office of the Attorney-General but without being able to indicate which may have concerned child labour and child prostitution. The Ministry of Justice has also reported 235 cases prosecuted in 1998 and 376 in 1999, most resulting in punishment by fines. The Committee appreciates the effort made to provide these figures, but finds it difficult to arrive at a precise idea of how many persons were prosecuted and found guilty of offences involving child prostitution and forced child labour. It encourages the

Government to continue gathering information and refining its statistical tools in this regard, and to provide further data in its next report.

13. In this connection, the Committee recalled in its previous comment that *Article 25 of the Convention* calls for the illegal exaction of forced or compulsory labour to be punishable as a penal offence, and that the penalties imposed by law should be really adequate and strictly enforced. The Government has replied that the use of fines has been deemed most appropriate in minor cases which were not related to bodily harm, abuse, detention, confinement and torture against child workers. The fines were considered adequate if compared to national average income, and the number of violations registered for child labour had decreased compared to the previous period, while the number of prosecutions for prostitution had increased significantly. The Committee urges the Government to keep this aspect of its enforcement measures under close review, in the light of the Convention's requirements.

* * *

In addition requests regarding certain points are being addressed to the following States: *Albania, Antigua and Barbuda, Belize, Bulgaria, Cameroon, Central African Republic, Chile, Congo, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominica, El Salvador, Fiji, Gabon, Guatemala, Haiti, Islamic Republic of Iran, Ireland, Kyrgyzstan, Lao People's Democratic Republic, Lesotho, Liberia, Libyan Arab Jamahiriya, Malaysia, Mauritania, Netherlands, Niger, Nigeria, Papua New Guinea, Romania, Russian Federation, Saint Lucia, Sierra Leone, Solomon Islands, Sri Lanka, Tajikistan, United Republic of Tanzania, Trinidad and Tobago, Zambia.*

Convention No. 30: Hours of Work (Commerce and Offices), 1930

Equatorial Guinea (ratification: 1985)

The Committee notes with regret that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

Further to its previous comments, the Committee notes the Government's indication. The Committee observes that a new Law No. 12 1992 of October on trade unions and labour relations has been promulgated. The Committee notes the Government's statement that the detailed rules applying in certain situations and referred to in section 49 of the Labour Law of 1990 have not yet been adopted. The Government endeavours to adopt such rules and expects the representative organizations to help in the drafting.

The Committee asks the Government to communicate the rules adopted in compliance with the Convention after having consulted the employers' and workers' organizations concerned.

The Committee also asks the Government to provide information on the practical application of the Convention, including for instance, extracts from the reports of the inspection services and all relevant information, as requested under *Part V of the report form*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ghana (ratification: 1974)

The Committee notes the Government's latest report, on the period ending June 1999. It recalls that for many years its comments have related to the need to give effect to *Articles 5 and 7 of the Convention* by amending sections 50 and 53 of Labour Decree No. 342 of 3 April 1969. Already in 1989, the Committee noted in a direct request that the Labour Advisory Committee had proposed to the Government an amendment of the 1969 Decree to this effect. The Committee regrets that no progress has been made since then and that the Government has merely indicated in its successive reports that the review procedure is proceeding. The Committee trusts that the draft codification of national labour legislation mentioned in the Government's latest report will be adopted very shortly and that copies of the texts relating to application of the Convention will be transmitted to the ILO as soon as possible.

Panama (ratification: 1959)

The Committee notes the Government's last report on the application of the Convention and the information it contains in reply to its previous comments. It notes with regret that no measures have been taken by the Government to harmonize the Labour Code with the provisions of *Article 7 of the Convention*. The Committee recalls that since 1975 it has been commenting on the need to set an annual limit on the number of hours' overtime provided for in section 36(4) of the Labour Code. Deeming the 468 hours' overtime per year allowed by this provision to be too high, the Committee expressed the hope that the Government would take account of the maximum of 250 hours per year proposed in the Bill drawn up following the direct contacts made in 1977 by a representative of the Director-General of the ILO. In the Committee's view, the study commissioned by the Ministry of Labour on the above Bill, a copy of which was sent with the report, raises no real objections to the adoption of this annual limit on overtime, and the difficulties raised concerning the compatibility of some Articles of the Convention with the provisions of the national Constitution and legislation arise from too rigid an interpretation of minimum or optional standards.

The Committee is bound once again to ask the Government to take all necessary steps at the earliest possible date to bring its legislation into line with the prescriptions of *Article 7 of the Convention* and reminds it that it may seek technical assistance from the ILO.

[The Government is asked to report in detail in 2002.]

Syrian Arab Republic (ratification: 1960)

The Committee notes the indications contained in the Government's latest report concerning the re-examination of the new draft Labour Code by the Committee for Consultation and Tripartite Dialogue in order to take fully into account its comments on the application of the Convention and of the Hours of Work (Industry) Convention, 1919, (No. 1). It trusts that the Government will shortly be in a position to adopt the draft as modified and will not fail to inform the ILO accordingly.

The Committee wishes to recall that, for many years, it has been drawing the Government's attention to the fact that the provisions of section 117 of the current Labour Code, which provide that "hours of work and breaks must be organized in such a

fashion that the presence of the worker at the workplace does not exceed 11 hours a day", are liable to result in abuse and should be amended so as not to require the presence of the worker at the workplace beyond the limits of normal working hours which, in accordance with *Article 3 of the Convention*, must not exceed eight hours in the day.

* * *

In addition, a request regarding certain points is being addressed directly to Paraguay.

Convention No. 35: Old-Age Insurance (Industry, etc.), 1933

Chile (ratification: 1935)

1. The Committee notes the conclusions and recommendations of the committee set up to examine the representation made by a number of Chilean unions of employees of pension fund administrators (AFPs), under article 24 of the Constitution, alleging non-observance by Chile *inter alia* of Convention No. 35 (document GB.277-17/5, 277th Session, March 2000). Bearing in mind the conclusions contained in paragraphs 18-25 of the report and in the observations made by the Committee of Experts, the above committee recommended the adoption of measures to ensure that:

- (i) the pension system established in 1980 by Legislative Decree No. 3500 is administered by non-profit-making institutions in accordance with the provisions of Conventions Nos. 35 and 36 (*paragraph 1 of Article 10*) and Conventions Nos. 37 and 38 (*paragraph 1 of Article 11*), unless the administration is entrusted to institutions founded on the initiative of the parties concerned or of their organizations and duly approved by the public authorities, in accordance with Conventions Nos. 35 and 36 (*paragraph 2 of Article 10*) and Conventions Nos. 37 and 38 (*paragraph 2 of Article 11*);
- (ii) representatives of the insured persons participate in the administration of the system under conditions determined by national laws and regulations, in conformity with the provisions of Conventions Nos. 35 and 36 (*paragraph 4 of Article 10*) and Conventions Nos. 37 and 38 (*paragraph 4 of Article 11*);
- (iii) the competent services carry out and strengthen their oversight of employers and impose effective sanctions to discourage recurrences of failure to pay pension contributions.

2. The Committee observes that, in its recommendations, the committee set up to examine the representation of November 1998 confirms the observation that this Committee has been making for several years concerning *Article 10, paragraphs 1, 2 (administration of the insurance) and 4 (participation of the insured persons in the management of the insurance institution), of the Convention*. The Committee therefore hopes that the Government will take the necessary measures to implement the decisions of the Governing Body.

3. With regard to the other points raised in its previous comments, the Committee notes the information supplied by the Government in its report for the period 1998-99, which it decided to postpone examining pending the Governing Body's decisions concerning the abovementioned representation of November 1998. The Committee notes

that the Government provides no information on the matters of principle raised in its previous comments. That being so, the Committee hopes that the Government will take the necessary steps to provide, in accordance with *Article 9, paragraph 1*, of the Convention, that employers shall contribute to the resources of the insurance scheme and, in accordance with *Article 9, paragraph 4*, that the public authorities shall contribute to the resources or to the benefits of the insurance scheme.

4. With regard to the decision adopted by the Governing Body of the ILO at its 265th Session (March 1996) to invite States parties to Conventions Nos. 35, 36, 37, 38, 39 and 40 to consider the possibility of ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), and accordingly denouncing Conventions Nos. 35 to 40, the Committee notes that the Government fully agrees to and accepts the decision of the Governing Body concerning the denunciation of Conventions Nos. 35, 36, 37 and 38. So far, it has been unable to submit the denunciation of these instruments to the Tripartite Committee on Convention No. 144, but the Government hopes to be able to do so as soon as possible.

With regard to the possibility of ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), *Article 44* of which provides that acceptance of the Convention *ipso jure* involves the denunciation of Conventions Nos. 35, 36, 37 and 38, the Committee notes that Convention No. 128 has been submitted for consideration and analysis to the technical bodies for them to determine the feasibility of its implementation in the light of existing legislation, particularly the new system of pension administration and funding, and the differences between it and Conventions Nos. 35, 36, 37 and 38. No decision has been taken because it would appear that, as regards the administration and funding of pensions, Convention No. 128 does not differ from Conventions Nos. 35, 36, 37, 38, 39 and 40, which are to be denounced. The Committee asks the Government to inform it of any decisions taken on this matter.

5. The Committee notes the information submitted by the Directorate of the National Association of Academics of the University of Chile (AG); the Directorate of Act 19.170; Beneficiaries of the State Railway Company; the Chairman of the National Association of Employees of the Directorate of Libraries, Archives and Museums (DIBAN); the Association of Professional and Technical Staff of the University of Chile (APROTEC); the Association of Public Health Employees, Western Region; the Directorate of the Federation of Associations of Employees of the University of Chile (FENAFUCH); and the Association of Public Employees for Redress for Pension-related Injury.

In their observations the abovementioned organizations allege that, upon retiring, public employees who joined the individual capitalization pension system established by the Legislative Decree of 13 November 1980 have seen the amount of their pensions drop to one-third of their real income or, at best, to under one-half. This has given rise to a situation of inequality, since two workers of the same age with the same number of years' service and the same monthly pension or income may be treated differently on retirement, one receiving a pension amounting to one-third of that of the other, merely because they belong to different pension schemes. According to the above organizations, as a result some of the pensions already paid by the AFPs are lower than the minimum monthly wage. The Committee notes these observations. It recalls that, according to *Article 19* of the Convention, the rate of the pension shall be an amount which, together

with any means of the claimant in excess of the means exempted, is at least sufficient to cover the essential needs of the pensioner. The Committee hopes that the Government will provide relevant information on this matter.

6. Lastly, the Committee hopes that the Government will provide the information requested in its observation of 1999.

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Information supplied by *Argentina* in answer to a direct request has been noted by the Committee.

Convention No. 36: Old-Age Insurance (Agriculture), 1933

Chile (ratification: 1935)

See under Convention No. 35.

Convention No. 37: Invalidity Insurance (Industry, etc.), 1933

Chile (ratification: 1935)

See the observations made under Convention No. 35.

In regard to points 1 and 2 of the said observation:

1. *Article 10, paragraph 1, of the Convention.* See under Convention No. 35, *Article 9, paragraph 1.*
2. *Article 10, paragraph 4.* See under Convention No. 35, *Article 9, paragraph 4.*
3. *Article 11, paragraph 1.* See under Convention No. 35, *Article 10, paragraph 1.*
4. *Article 11, paragraphs 1 and 2.* See under Convention No. 35, *Article 10, paragraphs 1 and 2.*

Djibouti (ratification: 1978)

In reply to the Committee's previous comments on the need to introduce an invalidity insurance scheme in accordance with the Convention, the Government states that this Convention is not in keeping with the social, political, legal and economic situation in Djibouti. Industry in the country is still embryonic despite the emergence of a few factories in the last few years. The Committee takes note of this information and wishes to remind the Government that the Convention applies to workers, employees and apprentices not only in industrial enterprises but also in commercial enterprises and the liberal professions and to outworkers and domestic servants. It also notes from the additional information supplied by the Government that the latter hopes to consider this matter in the context of the revision of labour laws and regulations that it hopes to undertake with the Office's assistance. The Committee therefore trusts that as part of that revision the Government will be able to review the question of setting up an invalidity insurance scheme adapted to the country's needs and possibilities and in conformity with the fundamental provisions of the Convention. It asks the Government to provide information on any progress made in this respect.

Convention No. 38: Invalidity Insurance (Agriculture), 1933*Chile* (ratification: 1935)

See under Convention No. 35.

Djibouti (ratification: 1978)

In reply to the Committee's previous comments on the need to establish an invalidity insurance scheme in accordance with the Convention, the Government states that this Convention is out of keeping with the economic situation in Djibouti, which is not an agricultural country. The Committee notes this information and refers to its comments on Convention No. 37.

Convention No. 41: Night Work (Women) (Revised), 1934*Benin* (ratification: 1960)

The Committee notes the information contained in the Government's report.

The Committee notes that the general prohibition on the night work of women has been repealed under the terms of Act No. 98-004 of 27 January 1998 issuing the Labour Code, with the exception of pregnant women, who benefit from special protection in accordance with sections 168 to 173 of the Labour Code. Only workers under the age of 18 are currently covered by a prohibition of night work under sections 153-155 of the Labour Code. The Government states in its report that the new legislation in Benin does not prohibit night work by women because it is intended to promote the free access of women to employment. The Committee is therefore bound to note that the legislation which is in force no longer gives effect to the provisions of the Convention.

The Committee is bound to remind the Government that it is required to comply with the obligations deriving from the Convention as long as it has not been denounced. It therefore requests the Government to take the necessary measures to bring its law and practice into conformity with the Convention and to provide information in its next report on the progress achieved to this effect.

The Committee takes this opportunity to invite the Government to give favourable consideration to the ratification of either the Night Work Convention, 1990 (No. 171), or the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990.

Central African Republic (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

In its former comments, the Committee noted that section 3 of Order No. 3759 of 25 November 1954 allows departures to be made from the ban on night work for women in circumstances which are not recognized by this Convention. The Committee notes the Government's declaration that the social crisis which has affected the Government in recent years has not allowed it to amend section 3 of the said Order. It expresses the hope that the Government will do everything in its power to take, in the near future, the necessary

measures which have long been announced to bring the law into harmony with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Côte d'Ivoire (ratification: 1960)

The Committee notes the information supplied by the Government in its report.

The Committee notes that, by virtue of articles 22.2 and 23.1 of Act No. 95-15 of 12 January 1995 establishing the Labour Code and article 4 of Act No. 96-204 of 7 March 1996 regarding night work, the employment of women during the night is no longer prohibited with the exception of young persons under 18 years of age.

In addition, the Committee notes that according to article 1 of Act No. 96-204 night work is defined as any work performed between 9 p.m. and 5 a.m., whereas under *Article 2(1) of the Convention* the term "night" signifies a period of at least 11 consecutive hours, including the interval between 10 o'clock in the evening and 5 o'clock in the morning.

The Committee also takes due note of the Government's statement that the prohibition of night work for women which was heretofore deemed to be a measure of protection is now seen as discriminatory in nature and an unwarranted barrier to the recruitment of women workers. The Committee is bound to conclude, therefore, that the Convention has for all practical purposes ceased to apply.

The Committee recalls that the principal obligation for a government arising out of the ratification of an international labour Convention is to take such action as may be necessary to make effective the provisions of the ratified Convention, and to continue to ensure its application for as long as it does not decide to denounce it. Therefore, the Committee asks the Government to indicate the measures it intends to take to bring national legislation into conformity with the Convention.

The Committee takes this opportunity to invite the Government to give favourable consideration to the ratification of either the Night Work Convention, 1990 (No. 171), or the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990.

Venezuela (ratification: 1944)

The Committee takes due note of the Government's report.

The Committee notes with interest the enactment of Decree No. 3235 of 20 January 1999 regarding regulations under the Organic Labour Act, article 267 of which repeals Decree No. 1563 of 31 December 1973 to make regulations under the Labour Act with the exception of Title IV concerning special conditions of employment. It follows that Chapter III of Title IV on employment of women, and in particular articles 208-215 which give effect to the provisions of the Convention, continue to apply.

The Committee notes, however, that the Organic Labour Act of 1990 contains no provision prohibiting night work for women in industrial undertakings with the exception of article 257 which provides that minors under 18 years of age may not be

employed between 7 p.m. and 6 a.m. In addition, by virtue of articles 26, 135, 186, 258 and 379 of the same Act, women workers may not receive differential treatment as regards remuneration and other working conditions except for protective standards relating to maternity and family life. Furthermore, under article 195 of the Labour Act, night work is work performed between 7 p.m. and 5 a.m., whereas *Article 2(1) of the Convention* defines the term "night" as a period of at least 11 consecutive hours, including the interval between 10 o'clock in the evening and 5 o'clock in the morning.

The Committee notes that the Government intends to adopt new regulations concerning the employment of women, and expresses the firm hope that on this occasion steps will be taken to eliminate the discrepancies between the Organic Labour Act of 1990 and the corresponding regulations of 1999, and ensure full compliance with the provisions of the Convention.

The Committee takes this opportunity to invite the Government to give favourable consideration to the ratification of either the Night Work Convention, 1990 (No. 171), or the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 1990.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Estonia, Madagascar, Suriname*.

* * *

The Committee wishes to recall that its General Survey of this year refers to Conventions Nos. 4, 41 and 89 and its Protocol of 1990. The Committee invites the governments to examine this survey, in particular with respect to the application of Convention No. 41.

Convention No. 42: Workmen's Compensation (Occupational Diseases) (Revised), 1934

Algeria (ratification: 1962)

In reply to the Committee's previous comments, the Government indicates that a new schedule of occupational diseases has been determined by the Ministerial Order of 5 May 1996. It states in this respect that the list has been broadened, with the number of schedules of occupational diseases increasing from 62 to 83, and that the inter-ministerial commission entrusted with proposing the text of the list has endeavoured to take into account the comments made by the Committee of Experts.

The Committee notes this information with interest. In view of the fact that the Government has not transmitted a copy of the above Order, the Committee would be grateful if it would provide one as soon as possible. In this respect, it hopes that the new schedule of occupational diseases takes into account its previous comments concerning the schedules of occupational diseases annexed to the Order of 22 March 1968, as amended, which raised the following points:

- (a) the list of the various pathological manifestations appearing under each "disease" in the left-hand column of the schedules should be of an *indicative* nature;

- (b) the wording of the items concerning poisoning by *arsenic* (Schedules Nos. 20 and 21), manifestations caused by the *halogen derivatives of hydrocarbons of the aliphatic series* (Schedules Nos. 3, 11, 12, 26 and 27), *poisoning by phosphorus* and certain of its compounds (Schedules Nos. 5 and 34) should be replaced by wording covering in general terms all manifestations that may be caused by the above substances, in accordance with the Convention, which is worded in general terms on these points; and
- (c) the activities in which there is a risk of exposure to *anthrax infection* (Schedule No. 18) should include the "loading and unloading or transport of merchandise" in general.

Australia (ratification: 1959)

1. *Capital territory*. The Committee notes with interest the information supplied by the Government to the effect that the Workmen's Compensation Act of 1951 has been amended to include in the list of occupational diseases all the trades, industries or processes likely to cause anthrax infection. Since the text of this amendment has not been received by the Office, contrary to the indication in the report, the Committee hopes that the Government will send a copy of the list of occupational diseases as amended with its next report.

2. *Western Australia*. In its previous comments concerning the conditions in which anthrax is recognized as an occupational disease, the Committee emphasized the need to list among activities liable to cause this infection the loading and unloading or transport of merchandise in general. The Government states that the regulations on safety and health at work adopted in 1996 refer to anthrax in the same terms as the schedule attached to the Convention. The Committee notes this information with interest. It would be grateful if the Government would supply a copy of the relevant provisions of the abovementioned regulations, which have not been received by the Office.

3. *Queensland*. In its previous comments, the Committee stressed that, contrary to the Convention, the legislation of Queensland does not recognize the presumption of occupational origin of the diseases for workers engaged in the occupations or industries mentioned in the right-hand column of the schedule of the Convention when they suffer from one of the diseases appearing in the left-hand column of this schedule. It notes that the Government supplies no information on this matter. The Committee expresses once again the hope that the Government will be able to adopt very shortly this double-list system in order to ensure full application of the Convention.

4. *South Australia*. In its previous comments, the Committee noted that the second schedule of the Workers' Rehabilitation and Compensation Act, 1986, does not include the loading, unloading or handling of merchandise among the activities liable to cause anthrax infection. The Government indicates in its report that there has been no change in this regard. The Committee trusts that the Government will not fail to carry out the legislative amendments needed in order to ensure full application of the Convention on this point.

5. *New South Wales.* The Committee notes with interest that, according to the information supplied by the Government, silicosis with or without tuberculosis is included in Schedule 1 of the Workers' Compensation (Dust Diseases) Act of 1942.

Bahamas (ratification, 1976)

The Committee notes the information provided by the Government in its last report. It notes that in 1998 amendments were made to the National Insurance Act and its regulations, including the modification of the schedule of occupational diseases upon which it had commented previously. The Committee notes with satisfaction that the schedule of occupational diseases, as amended, gives full effect to *Article 2 of the Convention*; item 1(1) of the schedule now includes all halogen derivatives of hydrocarbons of the aliphatic series; item 2 respecting anthrax infection includes in the work liable to cause this disease, the loading and unloading or transport of merchandise; and item 7 of the schedule covers all pathological manifestations due to X-rays, radium and other radioactive substances.

Comoros (ratification, 1978)

The Committee notes the information supplied by the Government in its report. It also notes the comments sent by the Union of Autonomous Organizations of Comorian Workers (USATC) and the Government's reply to them.

For many years the Committee has been drawing the Government's attention to the need to amend Order No. 59-73 of 25 April 1959 to the extent that the schedules to it do not allow all the occupational diseases listed in *Article 2 of the Convention* to be covered. In its report, the Government states that texts or amendments relating to labour legislation must be submitted for the approval of the Labour Council before being adopted. This tripartite institution established by the 1984 Labour Code has been unable to operate as yet, thus blocking labour legislation. The Government adds that there has been progress in the area of social security, thanks in particular to technical assistance from the ILO, which is participating in the drafting of new texts to take account of the present-day situation in the Comoros and the provisions of international Labour Conventions. As part of this process, the Government plans to take into account the Committee's comments on Order No. 59-73. The Committee takes due note of this information. It also notes, in connection with the comments of the USATC on the lack of any technical body to determine the occupational nature of diseases and of a national supervisory mechanism, that the Government acknowledges the need to improve the working of the National Social Welfare Fund which is somewhat lethargic. In these circumstances, the Committee expresses the hope that with technical assistance from the ILO the Government will be able to take all necessary measures to ensure that the National Social Welfare Fund functions properly and to amend Order No. 59-73 of 1959 to take account of the following points.

Article 2. (a) The schedules to Order No. 59-73 of 25 April 1959 contain, in the left-hand column, a restrictive list of pathological manifestations giving rise to entitlement to compensation for poisoning by lead, occupational benzoylism and arsenic poisoning, whereas the Convention, which is drafted in general terms on this point, includes all pathological manifestations attributable to the conditions listed in the left-hand column of its schedule when they are contracted by workers belonging to the

corresponding trades, industries or processes that appear in the right-hand column of the same schedule. It shall therefore be specified in the left-hand column of the schedules to the above-mentioned legislation that the list of symptoms and pathological manifestations is only indicative, as has been done in the right-hand column of the schedules in question. (A possible solution would be to add, for example, at the beginning of the list under the description of the various conditions, the words "including" or "principal diseases".)

(b) Moreover, the schedules to Order No. 59-73 of 25 April 1959 do not mention the following conditions or the activities likely to cause them, which appear in the schedule to the Convention:

- (i) poisoning by mercury, its amalgams and compounds and their sequelae;
- (ii) poisoning by phosphorus and its compounds, and its sequelae;
- (iii) poisoning by halogen derivatives of hydrocarbons of the aliphatic series;
- (iv) anthrax infection;
- (v) pathological manifestations due to radiation;
- (vi) primary epitheliomatous cancer of the skin (the national legislation mentions only certain forms of dermatosis caused by the use of lubricants in metalwork, whereas the initial Convention is much broader in scope in this respect).

(c) Lastly, the national legislation covers, in respect of arsenic, only its compounds with oxygen or sulphur and, in respect of benzene, only its homologues without referring to their nitro- and amino-derivatives.

The Committee hopes that in its next report the Government will be able to provide information on measures adopted that mark real progress in the application of the Convention. It asks the Government to provide copies of any texts that it adopts to this end.

France (ratification, 1948)

1. For many years the Committee has been drawing the Government's attention to the need for measures to bring the national legislation into full conformity with the Convention as regards: (a) the *restrictive nature* of the pathological manifestations listed under each of the diseases in the schedules of the national legislation; (b) the absence from these schedules of an item covering in general terms, as in the Convention, poisoning by all halogen derivatives of hydrocarbons of the aliphatic series and by all compounds of phosphorus; and (c) the omission of certain products mentioned by the Convention, the handling or use of which are liable to cause primary epitheliomatous cancer of the skin. It noted with interest in this connection the establishment of a supplementary system for the recognition of occupational diseases under which a characterized disease which is not included in a schedule may also be recognized as being occupational in origin when it is established that it is fundamentally and directly caused by the normal occupational activity of the victim and leads to the latter's death or a permanent incapacity at least equal to a given percentage (new section L.461-1, paragraph 4 of the Social Security Code). This system is based on a case-by-case examination carried out by regional committees for the recognition of occupational diseases in an adversarial investigation. The Committee asks the Government to provide

information on the manner in which the direct and fundamental link between the disease and the normal occupational activity of the victim (as set out in paragraph 4 of section L.461-1 of the Social Security Code) is established and proved. In the specific cases of the diseases included in the schedule attached to the Convention.

In its last report the Government acknowledges that the establishment of a direct and fundamental link between the disease and the normal occupational activity of the victim is one of the most difficult issues to solve for the regional committees for the recognition of occupational diseases. As to the furnishing of proof of this link, the social security body first conducts an administrative inquiry and the regional committee is responsible for the expert medical examination, which is carried out on a case-by-case basis in the light of the available scientific evidence and the victim's medical records. Decisions taken on the recommendation of a regional committee may be challenged before the social security tribunal, which may then seek the opinion of another regional committee. The Government states that these regional committees are autonomous bodies answerable only to the judicial authority and receive no directives from the administrative authority.

The Committee notes this information. It recalls that, by listing for each disease in its schedule the trades and industries liable to cause them, the Convention aims to relieve workers in these trades and industries from the burden of proving that they have actually been exposed to the risk of the disease in question, which in some cases can be particularly difficult to demonstrate. It notes in this connection that the Government acknowledges the difficulty of establishing a direct link between the disease and the victim's normal occupational activity. Furthermore, it is not clear from the information supplied in the Government's report that the burden of proof does not lie with the victim. In these circumstances, the Committee asks the Government to indicate whether the presumption of the occupational origin of the diseases listed in the Convention for workers in the corresponding trades or industries, guaranteed by this instrument, has been brought to the notice of the regional committees, and to state how effect is given in practice to this presumption. It also asks the Government to continue to provide information on the activities of the regional committees (number of cases investigated, nature of opinions, etc.) and on the outcome of any proceedings before these committees concerning the diseases contained in the schedule to the Convention.

2. The Committee is still concerned by the fact that the supplementary procedure for the recognition of occupational diseases allows claims for disorders not mentioned in the schedules of occupational diseases only if they are the cause of an incapacity at least equal to 66 per cent. It notes that this rate was set by reference to the minimum invalidity rate required for entitlement to an invalidity pension of common origin. The Committee wishes to draw the Government's attention to the fact that, according to *Article 1 of the Convention*, compensation for occupational diseases must be based on the general principles of the national legislation on compensation for industrial accidents whereas, under the industrial accident compensation scheme, victims may receive a pension for an incapacity rate of less than 66 per cent. The Committee still holds the view that diseases resulting in invalidity likely to cause significant prejudice to the social and occupational situation of the victim are thus excluded from the scope of the supplementary recognition procedure. It hopes that the Government will be able to reconsider this issue and provide information in its next report on any measures adopted or envisaged to that end.

[The Government is asked to report in detail in 2002.]

Greece (ratification: 1952)

The Committee notes the information and statistical data supplied by the Government in its latest report.

In its previous comments, the Committee emphasized the need to complete the lists of occupational diseases contained in section 40 of the Regulations on Occupational Diseases of the Social Security Institute (IKA). The Government indicates in reply that, in view of the evolution of medical and technical knowledge, the IKA has decided to set up a committee to prepare a new, more extensive list of occupational diseases. The Government adds that occupational diseases therein will be classified on the basis of risk factors, in accordance with international standards. The new list will contain an indicative description of the major pathological symptoms as well as the main activities most likely to cause them. The Committee notes this information. It hopes that the Government will take all the necessary measures for the adoption of the new list of occupational diseases in the very near future. It trusts that the list will give full effect to Article 2 of the Convention which has been the subject of its comments for many years. In this respect, the Committee recalls the subjects of its comments:

- (a) Pathological symptoms due to *poisoning by lead* (section No. 1), *poisoning by mercury* (section No. 2) and *poisoning by arsenic* (sections Nos. 15 and 16) are listed limitatively whereas the schedule appended to the Convention is drafted generally and covers all diseases caused by these substances. The list of these pathological symptoms should therefore be made indicative, for example by adding the term "etc." at the end of the left-hand column of sections Nos. 1, 2, 15 and 16.
- (b) Work liable to cause *anthrax infection* (section No. 25) should also include loading and unloading or transport of merchandise in general, as provided in the Convention.
- (c) The occupational diseases schedules do not seem to contain, as the Convention does, a section on *primary epitheliomatous cancer of the skin* and the work liable to cause it.

Guyana (ratification: 1966)

The Committee recalls that it has been drawing the Government's attention since 1971 to the need to amend the list of occupational diseases attached to Regulation No. 34 of 1969, implementing Act No. 15 of 1969 on national insurance and social security. It notes with regret, from the information communicated by the Government in its last report, that this list has still not been amended but that the competent authorities have been requested to accelerate the review procedure of the relevant regulation. It further notes that the Government no longer refers to the legislative reform regarding occupational safety and health. The Committee trusts that the Government will be able to take the measures necessary as soon as possible to amend the list of occupational diseases to ensure full application of the Convention on the following points:

- (a) Nos. I(x), (xi), (xii) and (xiv) on this list are to be replaced by a heading containing in general terms *all halogen derivatives of hydrocarbons of the aliphatic series*.

- (b) No. 7, which refers to certain disorders due to radiation should include *all pathological manifestations due to radium and other radioactive substances or X-rays* and the list of processes likely to induce these should be completed;
- (c) Nos. 11(i) and (v) relating to poisoning by lead and its compounds and mercury and its compounds should include *lead alloys and mercury amalgams respectively*;
- (d) No. 11(ii), which refers to poisoning by phosphorus and its compounds, should include *the inorganic compounds of phosphorus*;
- (e) No. 2 should include, among the processes likely to induce anthrax infection, *all loading and unloading or transport of merchandise of any kind*;
- (f) *silicosis with or without pulmonary tuberculosis* and the *industries or processes* involving the risk of this infection should also be added to the list.

The Committee wishes to remind the Government that it may request technical assistance from the ILO in this domain.

Haiti (ratification: 1955)

The Committee notes the information provided by the Government in its report to the effect that the OFATMA, the institution responsible for employment accident and occupational disease insurance, is endeavouring to make its inspection service more effective, to keep up to date a national register of protected workers, to gather reliable statistical data on the number and nature of the cases reported throughout the territory, to register the number of employment injuries and to take measures for their compensation.

The Committee takes due note of this information. It requests the Government to continue providing information on the measures taken by the OFATMA to obtain reliable data on the number and nature of the occupational diseases reported. In these conditions, the Committee hopes that the Government will be in a position to provide statistical data in its next report on the number of workers engaged in the trades, industries and processes included in the Schedule to *Article 2 of the Convention*, the cases of diseases reported and the sums paid by way of compensation, in accordance with *Part V of the report form*. Such data are indispensable to assess the manner in which effect is given to the Convention in practice.

Suriname (ratification: 1976)

With reference to its previous comments, the Committee notes with regret, from the information provided by the Government in its report, that the list of occupational diseases established under section 25 of Workmen's Injuries Decree No. 145 of 1947, as amended, has not been revised. It also notes that the Government no longer refers to the general revision of the labour legislation. In these conditions, the Committee is bound to draw the Government's attention once again to the need to take all the necessary measures to complete the list of occupational diseases envisaged under section 25 of the above Decree so as to include among the activities which may cause anthrax infection *the loading and unloading or transport of merchandise* in general, as provided by the Convention.

United Kingdom (ratification: 1936)

In its previous comments, the Committee drew the Government's attention to the need to supplement the list of prescribed occupational diseases so as to conform with the Convention in regard to poisoning by the halogen derivatives of hydrocarbons of the aliphatic series, disorders due to ionizing radiation and anthrax infection. In its report, the Government states that it is advised in this sphere by the Industrial Injuries Advisory Council (IIAC) which is an independent body and includes representatives from the Trades Union Congress (TUC) and the Confederation of British Industry (CBI) as well as experts in the field of occupational health. The IIAC is currently undertaking a long-term review of the list of occupational diseases in order to update and simplify the scheme. In particular, the Council is to confirm that the statutory requirements for prescription for compensation for an occupational disease continue to be satisfied and to identify any amendments required to ensure that they reflect current scientific knowledge.

The Committee takes note of this general information. It also notes with interest that the IIAC recommendations relating particularly to the addition of new diseases among those that can be caused by electromagnetic or ionizing radiation have been accepted. Despite these amendments, national legislation still does not ensure full application of the Convention. The Committee hopes that in the framework of the review process for the list of occupational diseases it will be possible to adopt measures which will take into account the points raised in the direct request which is being addressed to the Government.

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In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Brazil, Czech Republic, Iraq, Slovakia, South Africa, United Kingdom*.

Convention No. 44: Unemployment Provision, 1934*Peru (ratification: 1962)*

In reply to the Committee's previous comments, the Government refers once again to the compensation received by workers on the basis of length of service, which is considered to be a social benefit intended to cover the contingency arising out of the termination of the employment relationship and which is designed to assist the worker and his family (Presidential Decree No. 001-97-TR), and to the compensation for unwarranted dismissal (section 34 of Legislative Decree No. 728, approved by Presidential Decree No. 003-97-TR). The Government adds that the establishment of an unemployment insurance system depends on the existence of a fund to support it, which can be financed by employers' or workers' contributions. The Government could promote the adoption of regulations on this matter, but the cost of such a system would have to be borne by the workers or the employers.

The Committee notes this information. It emphasizes once again that neither the benefit for unwarranted dismissal, nor the compensation based on length of service constitutes a system of protection against unemployment in accordance with the requirements set out in the Convention. The Committee recalls that, to give effect to the

Convention, the States which have ratified the instrument have to guarantee to workers who are involuntarily unemployed a benefit or allowance paid through a scheme which may be a compulsory insurance scheme, a voluntary insurance scheme, a combination of compulsory and voluntary insurance schemes, or any of the above alternatives combined with a complementary assistance scheme (*Article 1 of the Convention*). The Committee notes that the information provided by the Government on this subject does not show any progress towards the implementation of an unemployment protection system, even though this Convention was ratified by Peru nearly 40 years ago. While aware of the economic impact of the establishment of such a system, the Committee hopes that the Government will be able to re-examine the situation and that it will be in a position in its next report to indicate the measures which have been taken or are envisaged to establish an unemployment protection system in accordance with the provisions of the Convention.

United Kingdom (ratification: 1936)

Article 10, paragraph 1, and Article 11 of the Convention. In previous comments the Committee noted that the rule by which a person could be disqualified from receiving unemployment benefit for having refused "suitable employment" (a concept to which *Article 10, paragraph 1*, of the Convention refers) was replaced by the apparently more restrictive concept of disqualifying a person for refusing employment notified by the employment service "without good cause", which was carried forward into the jobseekers' legislation (section 19(6)(c) of the Jobseekers Act 1995). In view of the fact that unemployed persons are authorized during a limited period of 1-13 weeks to refuse to seek or accept any employment which does not correspond to their usual occupation and for which the level of remuneration is lower than they are accustomed to receiving (section 6(5) of the Act and Regulation 16 of the Jobseeker's Allowance Regulations 1996), the Committee expressed the hope that the Government would indicate the measures taken or contemplated to ensure that unemployment benefit is paid at least during the minimum period of 78 working days per year (13 weeks), in accordance with *Articles 10 and 11* of the Convention.

In its report, the Government assures the Committee that there is no question of the jobseeker's allowance being withheld unreasonably. The Employment Service acts responsibly, and does not set out to offer people obviously inappropriate jobs; the issue of the "suitability" of an employment offer would also have to be taken into account in establishing whether a refusal of such offer was without good cause. In that respect, the Government believes that newly unemployed people should be given a reasonable chance of returning to their former type of work and rate of pay. There is therefore a "permitted period" from 1-13 weeks during which they can refuse other types of work and work which pays less than they used to receive. According to Regulation 16(2), in determining the length of a permitted period, an adjudication officer must take into account the jobseeker's usual occupation and any relevant skills or qualifications which he has, the length of the period during which he has undergone training relevant to that occupation, the length of the period during which he has been employed in that occupation and the period since he was so employed, and the availability and location of employment in that occupation. A claimant whose previous "usual occupation" had been of only short duration has a comparatively precarious connection with the labour market,

and it would not be in his own interest to hold out for 13 weeks for an occupation and rate of pay which in the reality of his circumstances will be found unattainable within a significantly shorter time. It is therefore appropriate that the length of a permitted period should continue to be determined by an independent adjudication officer. Furthermore, the Government refers to other possibilities for a jobseeker to restrict his availability for employment outside the permitted period, provided he has reasonable prospects of securing employment notwithstanding those restrictions in the light in particular of his skills, qualifications and experience, the type and number of vacancies within daily travelling distance from his home and the length of time for which he has been unemployed (Regulations 8, 9 and 10). The Government believes that these safeguards offer adequate protection to claimants. It also states that while records are not kept on the number of claimants with a permitted period of less than 13 weeks, it is unlikely to be many.

The Committee notes this information with interest. It observes in particular that, in relation to the notion of "suitable employment" referred to in *Article 10, paragraph 1*, of the Convention, the possibility, under the permitted period of up to 13 weeks provided for in Regulation 16 of the Jobseeker's Allowance Regulations 1996 for a jobseeker to restrict his availability for employment to his "usual occupation" with the same level of remuneration, ensures during this period a sufficient degree of protection to the person concerned. The criteria taken into consideration under Regulation 16(2) in the determination by an adjudication officer of the duration of the permitted period are in line with those normally used in assessing the suitability of employment. Moreover, after the permitted period and until the expiration of six months from the date of claim, jobseekers may also restrict their availability for employment by placing restrictions in particular on the level of remuneration, provided they can show that they have reasonable prospects for securing employment notwithstanding those restrictions (Regulations 8 and 9). The Committee notes however that the decisions concerning the duration of the permitted period, as well as the employability of a jobseeker in the light of the restrictions made, are placed under the responsibility of adjudication officers, who thus have broad discretion. It would therefore like to be informed whether any guidelines have been drawn up for the adjudication officers since the entry into force of the jobseekers' legislation on the abovementioned matters (availability for employment). If so, it would like the Government to supply a copy of such guidelines, as well as to provide statistics on the number of jobseekers to whom a permitted period was granted in relation to the total number of newly unemployed. Furthermore, in view of the Government's statement that the Employment Service does not offer people inappropriate jobs, the Committee would like the Government to indicate in its next report the criteria taken into consideration by the Employment Service in making concrete offers of employment to the jobseekers concerned.

The Committee raises a number of other points in a request addressed directly to the Government.

* * *

In addition, a request regarding certain points is being addressed directly to the United Kingdom.

Convention No. 52: Holidays with Pay, 1936

Central African Republic (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

For several years the Committee has observed that section 129, second paragraph, of the Labour Code provides that the length of service entitling workers to holiday can be of up to 24 or 30 months in the case of an individual contract or a collective agreement. It has further noted that in 1980 and 1988 a draft Decree was drawn up with the assistance of the ILO, providing for the amendment of section 129 of the Code so that persons covered by the Convention may benefit from a minimum holiday with pay every year. It has also noted that at the Conference Committee in 1992, the Government indicated that it started the process to amend the Labour Code to comply with the requirements of the Convention. The Committee notes that in its latest report the Government indicates that in its opinion the national legislation is not incompatible with the Convention. The Committee recalls that *Article 2 of the Convention* sets forth the right to annual holiday with pay of at least six working days after one year of continuous service. The Committee hopes that the Government will soon provide information on the measures adopted to ensure full compliance with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Côte d'Ivoire (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

In its previous observation, concerning the application of *Articles 2 and 4 of the Convention*, the Committee recalled that section 108, subsection 2, of the Labour Code provides that a collective agreement or individual employment contract may provide for a qualifying period of between one year and 30 months of actual service for entitlement to holiday. The Committee pointed out that this provision is not consistent with the Convention, which specifies that any agreement – collective or individual – to relinquish the right to an annual holiday with pay of at least six working days after one year of continuous service is void. In its latest report, the Government indicates that the draft new Labour Code repeals section 108 and has been submitted to the National Assembly for approval during its session ending 31 December 1994. The Committee hopes that the new Labour Code will be enacted in order to give full effect to the provisions of the Convention and that the Government will supply a copy of the final text.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Myanmar (ratification: 1954)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee has noted the Government's latest report on application of the Convention. In it the Government indicates that draft texts revising the 1951 acts on factories, shops and undertakings and on holidays and public holidays are still under consideration by the legislation supervisory body. With reference to its previous comments, the Committee recalls that these texts must ensure the application of the Convention to all the undertakings set forth in *Article 1 of the Convention*, particularly small establishments, shops and offices as well as building and public works and road transport undertakings. They should also ensure application of the provisions of the Convention on the two points below which have been the subject of comments by the Committee for many years.

Article 2, paragraph 2. Every person under 16 years of age should be entitled to an annual holiday with pay of at least 12 working days after one year of continuous service, whereas under section 4(1) of the Leave and Holidays Act workers between 15 and 16 years are allowed only ten days.

Article 4. Any agreement to forego or relinquish the right to the minimum annual holiday with pay laid down in the Convention (six working days, or, in the case of persons under 16 years of age, 12 working days) must be void, whereas section 4(3) of the same Act allows agreements permitting the accumulation of earned leave.

The Committee trusts that the revised texts will be adopted very shortly and that the Government will thus be able to give an account in its next report of progress made in application of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Azerbaijan, Bulgaria, Comoros, Denmark, France, Gabon, Kyrgyzstan, New Zealand, Paraguay, Tajikistan*.

Information supplied by the *Dominican Republic* and *Greece* in answer to a direct request has been noted by the Committee.

Convention No. 53: Officers' Competency Certificates, 1936

Requests regarding certain points are being addressed directly to the following States: *Croatia, Slovenia*.

**Convention No. 55: Shipowners' Liability
(Sick and Injured Seamen), 1936***Egypt* (ratification: 1982)

With reference to the comments that it has been making for a number of years, the Committee notes that the Government simply refers to the information provided in its previous reports. In this situation, the Committee cannot but once again ask the

Government to take the necessary measures in the near future to give effect to the Convention on the following points.

Article 11 of the Convention. In its previous comments, the Committee drew the Government's attention to the fact that section 2(b), *in fine*, of the Social Insurance Act No. 79, 1975, restricts application of its provisions to foreigners holding a contract of at least one year and is subject to a reciprocal agreement having been concluded, contrary to this provision of the Convention. In its last report, the Government indicated that the abovementioned section 2(b) states that its application is subject to the provisions of international Conventions ratified by Egypt. The Committee takes due note of this information. The Committee would be grateful if the Government would provide in its next report detailed information on the measures taken to ensure, both in law and in practice, that the provisions of the Convention are applied to foreigners even in the absence of a reciprocal agreement and whatever the length of their contract, particularly in the context of the Egyptian Social Insurance Institute. Please send the text of any implementing regulations (administrative memoranda, circulars, etc.) issued to this effect.

Liberia (ratification: 1960)

The Committee notes with regret that for the third consecutive year the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

Article 1, paragraph 2, of the Convention. In reply to the Committee's previous comments, the Government refers to the provisions of section 51 of the Maritime Law concerning vessels which can be registered under Liberian law. In this regard, the Committee wishes to draw the Government's attention to the fact that its comments concerned section 290-2 of the law, which provides that persons employed on vessels of less than 75 net tons are not covered by the provisions of Chapter 10 of the law relating specifically to the obligations of the shipowner in the event of seafarers' sickness or accident.

Article 2, paragraph 1. The Committee noted that section 336-1 of the Maritime Law provides for payment of the wages, maintenance and medical care of the seaman in cases of sickness or accident while he is off the vessel provided that he is "off the vessel pursuant to an actual mission assigned to him by, or by the authority of, the master". The Committee recalls that under this provision of the Convention the shipowner is liable in all cases of sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement.

Article 6, paragraph 2. The Committee noted that, contrary to this provision of the Convention, the approval of the competent authority is not required when a sick or injured seaman has to be repatriated to a port other than the port at which he was engaged, or the port at which the journey commenced, or a port in his own country or the country to which he belongs. Under section 342-1(b) of the Maritime Law, agreement between the seafarer and the master or shipowner suffices. The Government states that if there is agreement between the parties, administrative authorization is not necessary but that, in the event of disagreement, the parties may submit the matter to the Commissioner of Maritime Affairs by virtue of section 359 of the law. The Committee notes this information. It wishes to draw the Government's attention to the need to include provisions in its legislation making it compulsory to seek the approval of the competent authority when the parties agree to a port of repatriation other than those laid down in *Article 6, paragraph 2(a), (b) or (c)*, of the Convention. In fact, the provisions of this Article of the Convention are designed to protect

a sick or injured seafarer by preventing the master or the shipowner imposing on him a port of repatriation other than the port at which he was engaged, the home port of the vessel or a port in his own country or the country to which he belongs, without the approval of the competent authority; in the event of disagreement between the parties, an appeal to a conciliation authority is not sufficient in itself.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Peru (ratification: 1962)

The Committee notes the information supplied by the Government in its last report. It also notes that the *Sindicato de Capitanes Potrones de Pesca de Puerto Supe y Anexos* has supplied further information on the operating difficulties of the system of supplementary insurance against hazardous risks established by the Social Security Modernization Act on the Health Scheme (No. 26790). The Committee has already noted these difficulties in its comments on the application of Convention No. 56. The Committee also takes note of the information supplied by the Government in reply to the trade union's comments.

The union states that the adoption of the Social Security Modernization Act on the Health Scheme (No. 26790) has resulted in the repeal of Act No. 18846 which granted compensation to fishermen and also to workers subject to special employment regimes in the event of temporary incapacity for work resulting from an occupational disease or industrial accident. The new regime established by Act No. 26790 affords less protection in this regard, despite the establishment of supplementary insurance for hazardous work. It seems that the provisions relating to this supplementary insurance are not sufficiently clear and 95 per cent of industrial employers and fishing boat owners have not subscribed to it. The supplementary information provided by the union refers to the case of several seafarers who are incapacitated for employment and have received no compensation from their employers who have referred the victims to the social security body.

In reply to these comments, the Government states that seafarers enjoy protection equivalent to that provided by Act No. 18846. In fact, in general, Act No. 27056 establishing a social security health scheme includes seafarers in its scope (section 4). Furthermore, in 1999, hired fishermen and self-employed fishermen were included as regular members of the social insurance health scheme, ESSALUD (Act No. 27177). Seafarers, fishermen and their dependants are thus entitled to benefits for prevention, promotion, recovery and rehabilitation, as well as cash benefits provided by ESSALUD. In addition, the regular members of ESSALUD may in certain cases be covered by a supplementary insurance for hazardous work (section 19 of Act No. 26790). This compulsory insurance is borne by employers who conduct high-risk activities, which include fishing. Employers who have not subscribed to this insurance are liable to the relevant administrative penalties and are responsible for the cost of benefits granted by the social security institute to workers in the event of accident. The Government considers, in these circumstances, that the provisions which govern this supplementary insurance are sufficiently clear and that, if the percentage of non-compliance with the obligation to contract this insurance is as high as that cited by the union, the inspection bodies will have to adopt the necessary measures.

The Committee notes all this information. It notes that the protection of seafarers in the event of sickness or accident is insured, on the one hand, by the 1987 regulations on harbour masters' offices and maritime, river and lake activities, under which shipowners are responsible for medical assistance and maintenance of wages for seafarers in a situation of incapacity for work on board and, on the other hand, by the Social Security Modernization Act on the health scheme and its implementing regulations (social insurance regime in regard to health and supplementary insurance for hazardous work). The Committee notes, nevertheless, according to the information supplied by the trade union, that the system for protection of seafarers described above encounters difficulties of application in practice in that certain seafarers who are the victims of an accident or suffering from illness have no protection because neither the shipowner nor the general or supplementary health insurance system provides them with compensation for incapacity to work. In this regard, the Committee recalls that by virtue of *Article 4, paragraph 3, and Article 5, paragraph 3, of the Convention*, the shipowner may cease to be liable for medical assistance and payment of the whole or part of the wages due to a seafarer in the event of illness or accident resulting in incapacity for work, *from the time at which* the victim becomes entitled to medical benefits under a compulsory sickness insurance, compulsory accident insurance or workmen's compensation for accidents in force for seafarers in the territory where the ship is registered. In these circumstances, the Committee would be grateful if the Government would communicate in its next report information on the application in practice of the supplementary insurance system for hazardous work in regard to seafarers. Please also supply information (including statistics, inspection body reports, administrative sanctions for shipowners, if any, etc.) on the measures taken or envisaged to ensure that in practice, on the one hand, employers subscribe to this insurance and that, on the other hand, notwithstanding failure to conclude such insurance, seafarers are entitled to the benefits guaranteed to them by this Convention in the event of sickness or accident.

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In addition, requests regarding certain points are being addressed directly to the following States: *Bulgaria, Djibouti*.

Convention No. 56: Sickness Insurance (Sea), 1936

Djibouti (ratification: 1978)

In reply to the Committee's previous comments, the Government states in its last report that the texts to implement Act No. 212/AN-82 issuing the Shipping Code have not been adopted, so there is still no sickness insurance scheme for seafarers. The Government adds that it undertakes to provide information on any measures envisaged to bring the national legislation into line with the provisions of the Convention. The Committee takes note of this information and of the information sent subsequently by the Government indicating that very few seafarers are registered in Djibouti and that they are subject to the general sickness insurance scheme. In this connection, the Committee notes from the information sent by the Government on the application of Convention No. 24, that the Social Protection Body (OPS) has no sickness insurance branch able to provide the protection for seafarers laid down in the Convention. In these circumstances, the Committee again expresses the hope that the Government will be able

to provide information in its next report on the adoption of measures denoting real progress in the establishment of a sickness insurance scheme for seafarers which will ensure that they enjoy protection in accordance with that established in the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Bulgaria, Egypt, Norway*.

Convention No. 58: Minimum Age (Sea) (Revised), 1936

Grenada (ratification: 1979)

Further to its previous comments, the Committee notes with satisfaction that, under section 32 of Act No. 14 of 1999 on employment, the minimum age for employment or work on vessels has been raised to 16 years.

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In addition, requests regarding certain points are being addressed directly to the following States: *Lebanon, Nigeria, United Republic of Tanzania (Zanzibar)*.

Convention No. 59: Minimum Age (Industry) (Revised), 1937

Paraguay (ratification: 1968)

The Committee notes the new Labour Code (Act No. 213, promulgated on 29 October 1993), as well as Act No. 496 amending, broadening and repealing sections of Act No. 213/93, of the Labour Code. The Committee asks the Government to supply information on the following points:

Article 2 of the Convention. The Committee notes that the new section 120 of the Labour Code, as well as section 184 of the Minors' Code, allows minors of less than 15 years but more than 12 years of age to work in undertakings in which those employed are "preferably" members of the employers' family. The Committee recalls that *Article 2, paragraph 2*, provides that national legislation may permit the employment of children under 15 in undertakings in which "only" members of the employers' family are employed. The Committee requests the Government to provide information on the measures adopted or to be adopted to bring the national legislation into conformity with the Convention in this connection.

Article 3. The Committee notes that section 121(d) of the Labour Code, and section 188(e) of the Minors' Code, prohibit the employment of minors of less than 18 years in employments which are dangerous to the life, health or morals, or which require exertion beyond the capacity of their age, as specified by the health authority. The Committee also takes note that section 125 of the Labour Code prohibits the employment of persons under 18 years in certain employments, such as those provided under points: (b) tasks or services liable to affect morality or good customs; (c) street selling and hawking, except where expressly authorized; (d) dangerous or unhealthy work and (e) work in excess of the established working day, of the person's physical strength, or which could impede or retard normal physical development. The Committee requests the Government to indicate the measures adopted or to be adopted which,

through regulations or administrative measures, define the details of the forms of employment to be included under these provisions.

Sierra Leone (ratification, 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

In its previous comments, the Committee noted the draft Employment Act prepared with the ILO's assistance which prescribes the age of 16 years for admission to employments likely to jeopardize the life, health or morals of young persons, so as to give effect to *Article 5 of the Convention*. The draft Act also provides that "the employer shall keep a register of all children under the age of 18 years employed by him and of the dates of their birth", in accordance with *Article 4 of the Convention*. The Committee notes that the draft Act has not yet been enacted. Therefore, it expresses the hope again that the new Act will be adopted in the very near future in order to ensure complete conformity of the national legislation with the Convention on these points and that the Government will soon be able to communicate the text of the new Employment Act.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

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In addition, requests regarding certain points are being addressed directly to the following States: *Burundi, United Republic of Tanzania*.

**Convention No. 60: Minimum Age (Non-Industrial Employment)
(Revised), 1937**

Paraguay (ratification, 1966)

The Committee notes the information sent by the Government in its report. It also notes Act No. 496 of 22 August 1995 which amends, widens and repeals sections of Act No. 213/93 of the Labour Code.

The Committee further notes the information contained in the initial report which the Government presented to the 167th and 168th sessions of the Committee on the Rights of the Child (CRC/C/3/Add.22) and in the additional report which the Government presented before the 385th session of the Committee (CRC/C/3/Add.47). In these reports, the Government states that in 1991, the Directorate General for the Protection of Juveniles, under the aegis of the Ministry of Justice and of Labour initiated the reform of the Minors' Code in force, and that since that time three preliminary drafts had been drawn up under the Directorate General for the Protection of Juveniles, Defence for Children International and the Juvenile Protection Centre. However, lack of consensus has meant that these preliminary drafts have not been included in the legislation. The Government also stated that a new draft was prepared and was submitted to the National Congress in December 1995. The Committee requests the Government to provide information on the progress made in the adoption of the above draft and to send a copy of the new Minors' Code when adopted.

Article 2 of the Convention. In its earlier comments the Committee had referred to article 119 of the Labour Code. The Committee notes the information sent by the

Government to the effect that Act No. 213/93 is amended by Act No. 496/95. The new section 119 specifies that the minimum age of 15 years applies to public or private industrial undertakings. The Committee observes that there is no provision either in the new Labour Code or in the Minors' Code, which fixes the minimum age for work in non-industrial undertakings, with the exception of section 6 of the Minors' Code which forbids work outside the home by children of less than 12 years. Consequently, the Committee again requests the Government to indicate the manner in which effect is given to in Article 2 of the Convention, which provides for a general prohibition to employing children under 15 years of age in non-industrial undertakings.

Article 3. In its earlier comments, the Committee had referred to article 120 of the Labour Code. The Committee notes that this article has been amended by Act No. 496/95. It regrets to note that the new section 120 reduces the minimum age for the employment of children in undertakings where those employed are "preferably members of the family of the employer", to 12 years. The Committee recalls that in its previous version, section 120 permitted the employment of children between 14 and 18 years old in non-industrial undertakings under certain conditions, which were in line with the provisions of this Article of the Convention. The Committee had also noted that: (i) section 6 of the Minors' Code, fixing the minimum age of 12 years for work outside the child's home, permits exceptions for such activities that would not endanger his or her physical health or morals, and which would not interfere with his or her education; and (ii) under section 186 of the Minors' Code, the minors' judge can authorize the work of minors over 12 years when it is indispensable for the maintenance of themselves or their parents and when it is compatible with their development. The Committee again recalls that Article 3, paragraph 2, of the Convention allows exceptions to the minimum age of 15 years, provided for in Article 2 of the Convention, only from the age of 13 years and only as regards light work. In consequence, the Committee, in noting a regrettable retrogression in the adoption of the new section 120 of the Labour Code, urges the Government to take the measures necessary to give effect to the Convention in this respect.

The Committee notes that section 123 of the Labour Code has been amended by Act No. 496/95. The Committee regrets to note that the new provision stipulates that children between 12 and 15 years of age are prohibited from working more than "four hours a day" and 24 hours a week. The Committee recalls that Article 3, paragraph 2(a), provides that children less than 14 years of age may not be employed, on light work, more than "two hours per day", whether that day be a school day or a holiday. The Committee therefore urges the Government to adopt the measures necessary to give effect to the Convention in this respect.

The Committee also notes that section 122 of the Labour Code has been amended by Act No. 496/95. The new provision stipulates that children aged between 15 to 18 years may not be employed during the night for the interval of "ten hours" from 8 p.m. to 6 a.m. The Committee recalls that under Article 3, paragraph 5(b), this interval may not be less than "12 hours" for children of over 14 years. The Committee recalls that the earlier provision was in conformity with Article 3, and consequently, that the new drafting of section 122 of the Labour Code is retrogressive. The Committee therefore urges the Government to adopt the measures necessary to give effect to this provision of the Convention.

The Committee is referring to other questions in a direct request.

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In addition, a request regarding certain points is being addressed directly to Paraguay.

Convention No. 62: Safety Provisions (Building), 1937

Central African Republic (ratification: 1964)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the information supplied by the Government in its report. It notes in particular the information that the Government has taken due note of the comments of the Committee and that the necessary measures will be taken within the overall revision of the legislative and regulatory texts on labour envisaged by the Department of Labour and that the technical assistance of the ILO's multidisciplinary advisory team for Central Africa will be requested. The Committee trusts this overall revision will be accomplished soon and that the Government will not fail to address the Committee's previous comments as set out below.

Introduction into national legislation of the standards set forth in ratified Conventions

In its previous comments, the Committee drew the Government's attention to the need to adopt measures in laws and regulations to give effect to the provisions contained in the Convention even if, as stated by the Government, under the Constitution of 4 January 1995, international agreements, treaties and Conventions that are duly ratified by the Republic have the force of national law.

The Committee recalls that the incorporation into national legislation of the provisions of ratified Conventions, from the mere fact of their ratification, is not sufficient to give effect to them at the national level in all cases in which the provisions are not *self-executing*, that is where they require special measures for their application, which is the case, at least, for *Part I of the Convention*. Furthermore, special measures are also needed to establish penalties for non-observance of the standards set forth in the instrument, which is the case of *Article 3(c)* of the Convention.

The Committee once again draws the Government's attention to *Article 1, paragraph 1*, of the Convention, in accordance with which each Member which ratifies the Convention undertakes to maintain in force of laws or regulations which ensure the application of the General Rules set forth in *Parts II to IV* of the Convention. In this respect, the Committee recalls that draft texts were prepared following the direct contacts which took place in 1978 and 1980 with the responsible government services. The Committee is bound to express the firm hope that the relevant texts will be adopted in the very near future.

Statistics of accidents (Article 6 of the Convention)

For a number of years, the Committee has been noting the absence, in the Government's reports, of statistical information relating to the number and classification of accidents occurring in the building sector. In its last report, the Government states that the Labour Department does not currently have at its disposal reliable statistics in this field.

The Committee recalls that, under this Article of the Convention, each Member which ratifies the Convention undertakes to communicate the latest statistical information

indicating the number and classification of accidents in an enterprise or sector. The Committee once again hopes that the Government will soon be in a position to indicate the measures which have been taken to give effect to the Convention on this point and to supply the appropriate statistical information.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to the Democratic Republic of the Congo.

Convention No. 63: Statistics of Wages and Hours of Work, 1938

General observation

The Committee recalls that on two previous occasions (in 1988 and 1999) it made general comments urging member States (15 States and five non-metropolitan territories) which are bound by Convention No. 63 to consider ratifying the Labour Statistics Convention, 1985 (No. 160).

The Committee wishes to reiterate that Convention No. 160 was adopted to permit the preparation of statistics to provide "the elements for describing, understanding, analysing and planning the many and complex dimensions of labour's role in the functioning of the modern economy and of society in general" (*Provisional Record* No. 35, International Labour Conference, 71st Session, 1985). For this purpose, Convention No. 160 was drafted so as to permit a flexible and gradual implementation. The Committee, bearing in mind the recommendation of the Working Party on Policy regarding the Revision of Standards of the Governing Body (November 1997), therefore reiterates its call to the governments concerned to contemplate ratifying Convention No. 160, the ratification of which will, *ipso jure*, imply denunciation of Convention No. 63. The Committee suggests that governments may wish to consider seeking the technical assistance of the Office for the purpose of facilitating the process of ratifying Convention No. 160.

Barbados (ratification: 1967)

In its previous comments concerning Parts II and IV of the Convention, the Committee asked the Government to make efforts to resume the compilation and publication of statistics of wages and hours of work required under these Parts of the Convention, and to continue to provide information on any progress made in this respect, especially following the technical assistance provided by the Office and the participation of officials from Barbados in the Subregional Workshop on the Development of a Wage Statistics Programme for the Caribbean (November 1996). Noting the Government's indication in its report that the Statistical Department is in the process of improving the response rate and coverage of statistics on employment and earnings, the Committee again requests the Government to provide more information on the abovementioned points.

The Committee again draws the Government's attention, as it did in its general observation of 1988 and general direct request of 1999, to Convention No. 160

concerning labour statistics, adopted in 1985, which revised the present Convention. The Committee recalls the "principles of flexibility and gradualism" of Convention No. 160, and would like to invite the Government to give consideration to the possibility of ratifying Convention No. 160.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Djibouti, Egypt, Kenya, South Africa, Syrian Arab Republic, United Republic of Tanzania, Uruguay.*

**Convention No. 67: Hours of Work and Rest Periods
(Road Transport), 1939**

A request regarding certain points is being addressed directly to *Peru*.

Convention No. 69: Certification of Ships' Cooks, 1946

Requests regarding certain points are being addressed directly to the following States: *Greece, Slovenia.*

Convention No. 71: Seafarers' Pensions, 1946

Djibouti (ratification: 1978)

The Committee notes that according to the information supplied by the Government in its latest report no measures have been taken for the purpose of establishing a pension scheme for seafarers, as provided for by section 142 of Act No. 212/AN 82 issuing the Shipping Code. The Government indicates in this regard that such a scheme will be established in due course when there is a sufficient number of seafarers in the country. In these circumstances, the Committee once again expresses the hope that the Government will be able to indicate in its next report the adoption of measures constituting tangible progress in the establishment of a pension scheme for seafarers in accordance with the provisions of the Convention. Meanwhile, it requests the Government to indicate in what manner the protection provided by the Convention is guaranteed for seafarers employed on board vessels registered in Djibouti.

Greece (ratification: 1986)

Article 4(3) of the Convention. The Committee notes with satisfaction that section 5(5) of Act No. 2575/98 has repealed section 25(2)(a) of Act No. 792 of 1978, under which the right to a pension was forfeited if a seafarer was convicted of collaboration with the enemy.

Peru (ratification: 1962)

1. In reply to the Committee's previous comments, the Government states that it has requested information from various public authorities regarding the Committee's comments in order to prepare the report on this Convention. The Government adds that,

as soon as it receives the information, it will be sent as a supplement. The Committee regrets to note that this information has still not been received. In these circumstances, the Committee would like the Government to provide a detailed report for 2001 including full information regarding the following questions raised in its previous observation:

- (a) With reference to the Committee's previous comments, the Government recalls in its report that, in accordance with Extraordinary Presidential Decree No. 057-PCM/93, the Ministry of the Economy and Finance pays the pensions due under Legislative Decree No. 20530 of 1974 to retired employees of the Peruvian Steamship Company (a limited liability company in liquidation), and that these pensions are paid normally. The Committee notes this information. It would be grateful if the Government would continue to provide detailed information on the manner in which the payment of the pensions of retired employees of the above Peruvian Steamship Company is ensured and would also provide information on the situation of former retirees of this company who have been excluded from their pension fund and have not been reinstated by judicial decision under the Convention.
- (b) The Committee also requests the Government to indicate in its next report whether the new system of private management of pension funds, established by Decree No. 054-97-FF of 13 May 1997, applies to persons employed on board or in the service of vessels flying the Peruvian flag and, if so, to supply information on the impact of this system on the application of the Convention.
- (c) Finally, the Committee would be grateful if the Government would provide more detailed information on the application of the Convention by providing precise responses to the questions in the report form for each Article of the Convention and by communicating, where appropriate, statistics on the number of seafarers covered by the various pension schemes.

2. The Committee notes the communication from the association of retirees and pensioners of the National Ports Enterprise (Empresa Nacional de Puertos S.A. - ACJENAPU) denouncing the violation of the acquired rights of pensioners of the Empresa Nacional de Puertos S.A. In a communication of 20 October 2000, these comments were transmitted to the Government from which there has been no reply as yet. In these circumstances, the Committee hopes that the Government will kindly include the comments it deems necessary on the observations of the ACJENAPU in its next report on the application of Convention No. 102 which seems to be a more appropriate framework for the consideration of these comments.

Convention No. 73: Medical Examination (Seafarers), 1946

Requests regarding certain points are being addressed directly to the following States: *Croatia, Malta, Slovenia*.

Convention No. 74: Certification of Able Seamen, 1946

Requests regarding certain points are being addressed directly to the following States: *Panama, Slovenia*.

**Convention No. 77: Medical Examination of Young Persons
(Industry) 1946***Nicaragua* (ratification: 1976)

The Committee notes the Government's reports.

For many years, the Committee has been drawing the Government's attention to the need to adopt provisions to ensure the application of the Convention. In its previous observation, the Committee noted the establishment of the National Occupational Safety and Health Council which is the Government's advisory body on matters of protection and promotion of the health and safety of workers. The Committee notes that this Council is in process of adopting the necessary regulations to remedy the shortcomings in national legislation. It notes, however, that according to the latest information supplied by the Government, there have been no changes in legislation. The Committee is therefore bound to conclude that the National Occupational Safety and Health Council has not yet taken the measures needed to adopt regulations which would, *inter alia*, apply the provisions of the Convention. The Committee therefore urges the Government to take the necessary measures to ensure full conformity of national legislation with the prescriptions of the Convention.

[The Government is asked to report in detail in 2002.]

Spain (ratification: 1971)

The Committee notes the information sent in the Government's report and the information supplied in answer to its previous comments. It notes the observation from the Trade Union Confederation of Workers' Commissions (CC.OO.) concerning the lack of consistency between the national legislation and the provisions of the Convention.

1. *Article 2 of the Convention.* For a number of years the Committee has been drawing the Government's attention to the absence of provisions establishing that minors must undergo a medical examination for fitness for employment before being hired. In its previous comments the Committee asked the Government once again to examine the problems arising from this inconsistency between the legislation and practice and the Convention and to take the necessary steps to bring its legislation and practice into line with the provisions of the Convention.

In its reply the Government refers to articles 42.2 and 43 of the Constitution, in which the rights of all workers regarding occupational safety and health are established in a general manner. It also refers to section 4(2)(d) of the Act issuing the Workers' Statute, as amended, which confers on workers the right to have their physical integrity respected and to an adequate health and safety policy. The Government further indicates that Act No. 31/1995 on risk prevention at work incorporates into domestic law European Directive 94/33 of 22 June 1994 concerning the protection of young people at work. In this connection the Committee notes that section 27 of Act No. 31/1995 on the prevention of risks at work provides, in its first paragraph, that, before assigning minors under 18 years of age to a job, employers must carry out an appraisal of the posts to which they are to be assigned, focusing particularly on the specific risks to the safety, health and development of young people which may arise from their lack of experience, their lack of knowledge or their lack of maturity. Furthermore, section 22(1) of the above

Act provides that the medical examination may be carried out only at the request of the worker or with the worker's consent, except when such an examination is required in order to assess the effects of working conditions on the health of workers or to establish whether the worker's state of health may constitute a danger for him or her, for the other workers or for other persons having a connection with the enterprise. The Committee notes in this connection the Government's statement that Act No. 31/1995 on the prevention of risks at work embodies the new preventive concept of occupational safety and health, namely that, on the basis of an evaluation of the risks that the work involves for the young people who are to perform it, the employer must take measures to protect their safety and health, taking account of the specific risks arising out of their lack of experience, their unawareness of hazards or their incomplete development. The Committee notes first that the measures to be taken depend on the nature of the dangers inherent in the work. Secondly, it recalls that the medical examination prior to employment specified in the Convention concerns the persons expressly referred to – namely children and young people under 18 years of age – the aim being to certify their fitness for a specific job, whereas the risk evaluation provided for in the abovementioned Act concerns the type of work to be performed and is therefore limited to the risks inherent in the work. Finally, the Committee notes section 196(1) of Legislative Decree No. 1/1999 to amend the General Social Security Act, which provides for medical examinations prior to hiring and periodic examinations for jobs involving a risk for the worker of contracting an occupational illness. However, section 6(2) of the Act issuing the Workers' Statute prohibits the employment of minors in jobs falling within the scope of section 196(1) of the abovementioned Legislative Decree.

The Committee observes that no provision expressly requires a thorough medical examination prior to employment, which is necessary for full effect to be given to *Article 2* of the Convention. Recalling that it is of vital importance that all minors should undergo a medical examination for admission to employment, the Committee again expresses the hope that the necessary measures will be taken as soon as possible to bring the law and practice into conformity with the requirements of this *Article* of the Convention.

2. *Article 2(1)*. The Committee notes that section 3(4) of Act No. 31/1995 on risk prevention at work excludes work in family enterprises from the scope of the Act. It notes that the Government confines itself to stating that the contractual relationship of minors engaged in activities in family enterprises is governed by Legislative Decree No. 1424/1985, section 13 of which establishes the obligation to respect safety and health. The Committee recalls that *Article 2(1)* of the Convention requires a medical examination for admission to employment for all children and young people regardless of the type of work contract. It hopes that the Government will take the necessary measures as soon as possible to ensure that the obligation to carry out a medical examination for fitness for employment is extended to minors working in industrial family enterprises.

3. The Committee notes the observations made by the C.C.OO. Noting that section 6(1) of the Workers' Statute, as amended by Legislative Decree No. 1/1995 of 24 March, establishes that the minimum age for admission to employment is 16 years, it observes that there is no provision in Spain's legislation for any type of medical examination for the admission to employment of young people between 16 and 18 years of age. Furthermore, the legislation draws no distinction between work in industrial

enterprises and occupations in other sectors of activity. According to the CC.OO., in these respects the legislation is in obvious breach of the Convention, particularly its core provisions, namely *Article 2(1)* regarding the medical examination for admission to employment, and *Article 3(1)* of the Convention, regarding the medical supervision of young persons until they have attained the age of 18 years. The CC.OO. asks the Government to take the necessary measures to bring national law and practice into conformity with the provisions of the Convention. The Committee observes that the CC.OO. has been making similar comments since 1991 and again requests the Government to provide information on all the points raised in the abovementioned comments.

[The Government is asked to report in detail in 2002.]

Tunisia (ratification: 1970)

The Committee notes with satisfaction the provisions of Act No. 96-62 of 15 July 1996 amending certain provisions of the Labour Code, including section 63. This gives effect to *Article 4 of the Convention*.

The Committee asks the Government to refer to its direct request, in which it raises other points.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Comoros, El Salvador, Kyrgyzstan, Lebanon, Tajikistan, Tunisia, Turkey*.

**Convention No. 78: Medical Examination of Young Persons
(Non-Industrial Occupations), 1946**

Cameroon (ratification: 1970)

The Committee notes with regret that, for many years and despite making several observations (1984, 1992, 1995 and 1996), the reports due from the Government under article 22 of the ILO Constitution have not been received. It hopes that a report will be provided for examination by the Committee at its next session and that the report will contain full information on the points raised in its previous direct request.

Since its first comment, the Committee has been noting the absence of provisions in the national legislation to apply the Convention to children and young persons exercising an activity on their own account, *while employees and apprentices are covered by the provisions of Order No. 17 of 27 May 1969*. The Government has emphasized that the own account activities of children and young persons are carried out in the informal sector, which eludes the supervision of the labour inspectorate, and that the application of the Convention to this sector could not be envisaged until some degree of control is exercised over it. Nevertheless, the Committee notes that, during the discussion in the Conference Committee in June 1995, the Government representative recognized the soundness of requesting an extension of the requirement of a medical examination for fitness for employment to all categories of children and young workers. He stated that the Government was aware of the necessity of this examination for

children and young persons. Moreover, in its reports, the Government has regularly expressed the intention of taking measures for this purpose. The Committee therefore urges the Government to provide information on the measures which have been taken or are envisaged to ensure the application of the Convention to this category of children and young persons.

Through its representative at the Conference in June 1995 and in its reports, the Government has emphasized the difficulties which would arise from the extension of the medical examination for fitness for employment to children and young persons in the informal sector. The Committee notes this fact, but recalls that children carrying on an own account activity are in fact covered by the Convention (*Article 1(1)*). The Committee therefore requests the Government to indicate the measures which have been taken to ensure the application of the Convention by extending the medical examination to children and young persons exercising an own account activity. In order to do so, it suggests that the Government envisage having recourse to the technical assistance of the ILO.

The Committee firmly hopes that the Government will make every effort to take the necessary measures in the very near future.

[The Government is asked to report in detail in 2002.]

Nicaragua (ratification: 1976)

The Committee notes the Government's reports.

It notes the Government's indication that some minors, working in the non-industrial sector, perform agricultural work and that the Government considers it necessary that the National Occupational Safety and Health Council, which is the advisory body on matters of protection and promotion of the health and safety of workers, should establish standards incorporating the provisions contained in the Convention along with those of section 133 and 134 of the Labour Code. On this matter, the Committee refers to its previous observation in which it noted the establishment of the abovementioned Council which is mandated to prepare and propose regulations in conformity with the Convention. According to the indications given by the Government in its report, the Committee concludes that the National Occupational Safety and Health Council has not yet taken the necessary measures to adopt regulations which would apply, *inter alia*, the provisions of the Convention. The Committee therefore urges the Government to take the necessary measures to ensure full conformity of national legislation with the provisions of the Convention.

[The Government is requested to report in detail in 2002.]

Spain (ratification: 1971)

The Committee invites the Government to refer to the comments made in its observation on the application of Convention No. 77.

[The Government is requested to report in detail in 2002.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Comoros, El Salvador, Greece, Kyrgyzstan, Lebanon, Tajikistan.*

**Convention No. 79: Night Work of Young Persons
(Non-Industrial Occupations), 1946**

Requests regarding certain points are being addressed directly to the following States: *Cuba, Israel, Kyrgyzstan, Lithuania, Peru, Poland, Russian Federation, Uruguay.*

Convention No. 81: Labour Inspection, 1947

Bahamas (ratification: 1976)

The Committee notes the Government's report and the information provided in partial response to its previous comments. It draws the Government's attention to shortcomings in the application of the Convention, particularly in relation to the following matters.

1. *Annual inspection reports and the central inspection authority.* The Committee notes the non-compliance by the central inspection authority with the obligation to prepare, publish and transmit to the ILO annual inspection reports, as envisaged in *Articles 20 and 21 of the Convention*. As a consequence, the Committee does not have at its disposition the information which is essential to assess the extent to which the Convention is applied in practice. Indeed, no figures are provided on the material and financial resources made available to the labour inspectorate, nor on the number and economic activities of the workplaces liable to inspection (*Articles 10 and 11*).

The Committee notes, on the one hand, that inspectorate units are attached to several government agencies, namely the Ministry of Public Works, the Department of Environmental Health, the Department of Labour and the National Insurance Board and, secondly, that each unit performs its duties independently and collaborates with other units; the Committee reminds the Government that, in accordance with *Article 4(1)*, labour inspection shall be placed under the supervision and control of a central authority and it would be grateful if the Government would provide it with detailed information on the manner in which effect is given to this provision. In any event, the Committee hopes that the Government will not fail to take all appropriate measures rapidly to ensure that annual inspection reports, within the meaning of *Articles 20 and 21*, are published and transmitted regularly to the Office. In the meantime, it would be grateful if the Government would provide the information requested under *Article 10* in the report form on the Convention, indicate the transport facilities made available to labour inspectors to ensure the mobility which is indispensable for the performance of their duties and supply information on the measures taken for the reimbursement of any travelling or incidental expenses.

2. *Recruitment, training and credibility of labour inspectors.* According to the information provided by the Government, inspection duties can be assigned to any

official and no specific training is envisaged for this purpose. Recalling that, in accordance with *Article 7*, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties, on the bases of the qualifications determined by the competent authority (*Article 7(1) and (2)*) and shall be adequately trained (*Article 7(3)*); the Committee requests the Government to take measures rapidly for the determination, in accordance with the above provisions, of criteria for recruitment and further training procedures for labour inspectors which are such as to confer upon them the authority and impartiality which are necessary in their relations with employers and workers (*Article 3(2)*).

The Committee is addressing a request directly to the Government on other matters.

Belize (ratification: 1983)

Publication of an annual inspection report. The Committee notes that no annual report containing information on the activities of the inspection services has been transmitted since the report of the Labour Department for 1990. With reference to paragraphs 272 and 273 of its 1985 General Survey on labour inspection, it emphasizes once again the importance that it attaches to the publication of an annual report, the form and the content of which are determined in *Articles 20 and 21*. The application of the legislation concerning conditions of work and the protection of workers while engaged in their work can only be improved if precise data are available on the subjects enumerated in *Article 21(a) to (g)*. The collection of this information requires the competent inspection services to comply with the obligation of periodical reporting established in *Article 19*. The publication of annual reports prepared by the competent central authority on the basis of these periodical reports offers the social partners the opportunity to express their views on the manner in which the application of the relevant legislation is supervised and allows the Government to guide its activities in relation to its priorities, taking into account the available resources. However, the Committee notes that one of the fundamental types of data necessary for such an exercise, mainly the number of workplaces liable to inspection, is not available, since the legislation concerning the registration of industrial and commercial enterprises is not applied. The Committee cannot recommend the Government too strongly to ensure that the registration of workplaces and the workers employed therein is carried out rapidly. It hopes that the Government will be in a position to provide information on the results of this operation in its next report and to ensure the proper application of *Article 21* in the near future.

Bolivia (ratification: 1973)

With reference to its previous observation, which has been repeated several times since the discussion in the Conference Committee in 1992 on the difficulties of applying the Convention, the Committee notes the reports sent by the Government in 1998 and 1999. Noting that the Government provides information in reply to earlier direct requests, the Committee emphasizes and reminds the Government that its comments were made in the form of observations published in its reports on the work of the 1995(bis), 1996 and 1997 sessions, and points out that the information supplied by the Government in its reports received in June 1998 and November 1999 do not answer

those observations. The Committee must accordingly stress once again that specific and detailed information should be supplied on the following points.

Articles 5(b) and 7 of the Convention. In reply to the question about measures taken to promote collaboration between officials of the labour inspectorate and employees and workers or their organizations, the Government cites the provisions of the Health and Safety Act, 1979. The Committee points out that for one thing, the Act was already mentioned in earlier reports by the Government and, in the Committee's view, is not sufficient to meet the obligation provided for in *Article 5(b)* and, for another, the excerpt from the Act attached to the 1999 report does not include the provisions relied on by the Government. The Committee recalls that, in the Government's report for 1993, it was considered practical to establish tripartite commissions to promote effective collaboration between officials of the labour inspectorate and employers and workers or their organizations. However, the Government found that it was first necessary to raise the level of legal and vocational training of labour inspectors through a programme of technical assistance from the ILO Regional Office. The Committee would be grateful if the Government would provide a copy of the entire Act as now in force together with specific information on the practical aspects of its application. It asks the Government to give details of all measures taken to raise the level of competence of labour inspectors with a view to establishing tripartite commissions for collaboration in labour inspection.

Articles 11 and 16. Recalling the Government's indication in an earlier report that the working conditions of labour inspectors had improved except in the area of urban transport, the Committee would be grateful if the Government would specify the nature of the improvements made for labour inspectors since 1989 and provide information on any measures taken or envisaged to provide them with the transport facilities they need in order to carry out inspection visits.

Article 10. The Committee notes that no information has been provided on the number, geographical distribution and categories of the labour inspectors covered by this Convention. The Committee considers that in the absence of any figures, it is impossible to ascertain whether the human resources are commensurate with the objectives of the Convention and asks the Government in its next report to provide the detailed information required by the report form on the Convention for each provision of this Article.

Articles 20 and 21. The Committee notes with regret that although the Government has for many years reiterated its commitment to taking appropriate steps to publish and transmit to the ILO an annual inspection report in accordance with these provisions of the Convention, no such report has been received. Also noting that no measures appear to have been taken to ensure that such reports are produced, the Committee reminds the Government that such reporting is an obligation that derives from ratification of the Convention and that technical assistance from the ILO may be sought for the purpose. It would be grateful if the Government would do its utmost as soon as possible to give effect to the relevant provisions of the Convention and to transmit any relevant information to the ILO.

The Committee is addressing a request on other points directly to the Government.

Bosnia and Herzegovina (ratification: 1993)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes that the Government has supplied no report on the application of the Convention since 1993.

1. *Obligation to report on ratified Conventions.* Recalling to the Government its formal acceptance on 12 April 1993 of the obligations of the ILO Constitution, in conformity with article 1, paragraph 3, thereof, the Committee would be grateful if the Government would provide periodic reports on the manner in which effect is given, in law and in practice, to the provisions of the present Convention by supplying the information requested in the report form adopted by the Governing Body to this end.

2. *Right to free access of labour inspectors to workplaces liable to inspection.* A representation addressed to the ILO on 9 October 1998 under article 24 of the ILO Constitution by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (UASBH) and the Union of Metalworkers (SM) alleging non-observance by the Government of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee established by the Governing Body of the ILO to examine the representation considered in the conclusions to its report adopted at the 276th Session of the Governing Body (November 1999) that the facts placed before it also constituted violations by the Government of the Termination of Employment Convention, 1982 (No. 158), and of Convention No. 81. It consequently adopted a series of Recommendations including that of entrusting the follow-up of the matter to the present Committee, especially for the purpose of monitoring the application of the Conventions cited above.

The representation in question reported a decision to dismiss 1,550 workers, on the basis of national origin or religion, taken by the directors of the "Aluminijum" and "Soko" factories, both situated at Mostar. It established that the inspectors mobilized by the trade union organizations to verify the facts and enquire into the precise circumstances of the dispute were unable to accomplish this task in the factories since they lacked the explicit prior authorization of the Cantonal Minister. The Committee notes that the fact that a cantonal labour inspector should be obliged to request authorization from the Cantonal Minister before undertaking an inspection visit is not in conformity with *Article 12(1) of this Convention*. The Committee stresses that, under *Article 12(a)*, labour inspectors should effectively be authorized to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection. Referring also to paragraphs 156 to 168 of its 1985 General Survey on labour inspection, the Committee requests the Government to take, as soon as possible, all necessary measures to repeal from the legislation the requirement that labour inspectors must seek the authorization of a higher authority to exercise their right of entry in the establishments and workplaces liable to their inspection.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Brazil (ratification: 1989)

The Committee notes the report from the Government in reply to the comment made by the Union of Workers in the Marble, Granite and Limestone Industry in the state of Espírito Santo (SINDIMARMORE) of 16 November 1999 as well as the documents describing the inquiry undertaken at the scene of the fatal occupational accident, which was the subject of a previous comment from the same organization. The Committee also notes the information supplied by the Government in reply to a further

comment from the Democratic Federation of Workers in the Footwear Industry of the state of Rio Grande do Sul concerning the measures taken further to the comment submitted jointly by this trade union on the subject of working conditions in undertakings in that sector.

The Committee notes that, according to the indications supplied by the Government, there has been a substantial increase in the number of extraction and associated undertakings in the state of Espírito Santo. Products processed by a thousand undertakings employing some 13,000 workers account for 80 per cent of national exports of these products, according to economic indicators. According to the Government, the profits thus generated are considerable and this activity is likely to undergo rapid expansion. It admits, however, that unfortunately this rapid development is leading to a steep increase in the number of industrial accidents and occupational diseases associated with exposure to dust, particularly silica. Inappropriate working methods explain the dangerous nature of the extraction activities and the handling of sharp materials. The conclusions of the rapporteur of the inquiry concerning the fatal accident that was the subject of SINDIMARMORE comments indicate that the frequency of industrial accidents is due, in most of the marble and granite extraction enterprises, to the obvious lack of training of workers and of information on the risks inherent in the work. The Committee hopes that his comment will arouse the attention of the Government and of the social partners concerned, particularly the employers' organizations of the enterprises in question. Indeed, it confirms the generally accepted idea for the need, on the one hand, of training for particularly exposed workers focused on awareness and identification of the risks inherent in certain activities and, on the other hand, to provide continuously updated information on the means and techniques for preventing these risks. Noting that the Government underscores the particularly lucrative nature of the abovementioned extraction activities, the Committee trusts that the latter will ensure that a reasonable part of the resulting income can be used to develop the occupational safety and health machinery for workers involved in it. In this regard, the cooperation of employers' and workers' organizations could be of immense value.

The Committee notes that, according to SINDIMARMORE of the State of Espírito Santo, nine workers died as the result of industrial accidents during 1999 in enterprises of the abovementioned mining sector. Noting, furthermore, the fatal industrial accident from an explosion which occurred in 1995 of a young 18-year old worker, the union indicates that no investigation has been carried out to elucidate the circumstances. First, it regrets that the competent regional labour office does not deem it necessary to order provisional closure of enterprises violating safety and hygiene measures until the latter have been brought into conformity; secondly, it denounces the ineffectiveness of court proceedings and fines which it alleges are not even applied. In this regard, the Committee wishes to draw the Government's attention to the fact that under *Article 13, paragraph 2(b), of the Convention*, labour inspectors should be empowered to order or initiate orders that measures with immediate executory force be carried out in the event of imminent danger to the health or safety of workers and, where this procedure is not compatible with the administrative practice of the country, inspectors should, in conformity with *Article 13(b)*, have the right to apply to the competent authority for the issue of orders or the initiation of measures with immediate executory force. The Committee, furthermore, would highlight *Article 18* under which adequate penalties for violation of the legal provisions enforceable by labour inspectors shall be provided for

by national laws or regulations and effectively enforced. In this context, the Committee emphasizes that fines, for example, should be sufficiently high to be dissuasive and that procedures for their execution should be speedy. The Committee would be grateful if the Government would indicate the measures taken or envisaged to give effect to the abovementioned provisions of the Convention, both in the sectors referred to by the abovementioned trade union organizations and in the other economic sectors covered by labour inspection.

Referring also to its 1999 observation on the Convention, the Committee hopes that the Government will not fail to supply the information requested under the following points.

Article 16 (a) and Article 16 of the Convention: Functions of the system of labour inspection, adequate frequency and thoroughness of inspection visits.

iii. Application of the provisions to combat child labour and forced labour: The Committee notes with interest the Constitutional Amendment No. 20, dated 15 December 1998, which increased the minimum age of admission to work from 14 to 16 years, except for apprentices who can be admitted to work as from 14 years. It also notes the Government's indication that cells to combat child labour and protect adolescent workers, which include inspectors, elaborated a preliminary assessment on child and adolescent work which identified 75 activities exercised by children and adolescents. On that basis the inspection teams have selected areas where child labour is most critical with the aim of reinforcing inspection activities. The assessment was updated in 1997-98 on the basis of the data collected by the inspection teams. In relation to activities to combat forced labour the Committee notes the indication that the Executive Group for the Repression of Forced Labour (GERTRAF) operating through mobile inspections has given results, in particular through joint efforts of the federal police with the labour prosecutors. The Committee hopes that the Government will continue to supply information on the activities of the labour inspection to combat child and forced labour and on the progress achieved.

iv. Application of the legal provisions relating to occupational safety and health: With regard to the implementation of the National Programme to Combat Occupational Accidents and Disease, the Committee notes that in 1997 the number of accidents (369,065 cases) and that of occupational diseases (29,707 cases) has decreased by 6.67 per cent and 14.85 per cent respectively as compared to 1996. The Committee further notes the Government's information that in 1998 the number of inspections relating to health and safety at work rose by 14.31 per cent as compared with 1997. The Government also states that the policy of prioritizing inspections in health and safety at work led the inspectors to visit the highest risk establishments which led to an increase of 247.61 per cent in the number of embargo orders (*embargos*) and of 71.95 per cent in the number of cases of prohibition to entry (*interdições*). In relation to the construction sector, which was made, in 1998, a national priority for labour inspection given the high occupational accident rates, in 1998 the number of embargo orders (10,640 cases) and that of prohibition to entry (6,455 cases) increased by 267.28 per cent and 93.55 per cent respectively as compared to 1997.

The Committee hopes that the Government will continue to supply information on the progress made in reducing the number of industrial accidents and occupational diseases through increased and focused inspection in the field of safety and health in

workplaces, in particular in the marble, granite and limestone industry of the State of Espirito Santo.

The Committee also draws the Government's attention to the requests it has addressed to it directly and thereby asks it to supply the information requested on the application of *Articles 2(1), 6, 7(3), 8, 10, 20 and 21* of the Convention.

Central African Republic (ratification: 1964)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following points:

Articles 10, 11 and 16 of the Convention. In its previous comments, the Committee noted the inadequacy of the number of inspectors and the precarious nature of the material conditions for carrying out inspection duties (fire and the failure to rebuild the Regional Labour Inspectorate in Bangui; lack of vehicles available to the Labour Directorate General giving rise to a lack of efficiency in regional inspections; shortage of supplies and equipment; failure to reimburse travelling expenses to inspectors).

The Committee again expresses the hope that the Government will take the necessary measures so that labour inspection duties can be performed by making available the necessary resources and so that workplaces can be inspected as often and as thoroughly as is required. The Committee is addressing a request directly to the Government concerning the application of *Articles 3(2), 20 and 21* of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Comoros (ratification: 1979)

The Committee notes the Government's brief report in answer to its previous comments. It also notes the observation by the Union of Autonomous Workers' Organizations of Comoros (USATC) concerning the application of the Convention, and the Government's reply.

According to the Government's report, the human resources of the labour inspectorate fall far short of the Convention's requirements based on the criteria set out in *Article 10 of the Convention*. Of the three inspectors working in Grande Comore, only one is qualified, and the inspector serving in the Mohéli region has no means of communicating with the central management in Moroni, so his service is virtually unoperational. In its observation in response to the Government's report, the USATC asks the Government to endeavour to provide at least a minimum inspection service and expresses the hope that trade union capability in terms of international labour standards and social security matters will be strengthened. The Committee notes that, for its part, the Government is hoping to receive ILO technical assistance in order to strengthen the organizational capabilities of the labour administration and to improve the training of labour inspectors and the social partners. It also notes that in its general report on ratified Conventions the Government attributes the labour inspectorate's lack of resources to the economic difficulties the country has been facing for several years, and reiterates its request to the ILO for technical assistance. The Committee invites the Government to take appropriate steps to gather and send to the ILO all available information on the legislation and on the labour inspectorate's human and material sources, and to indicate

what public and, if any, private bodies are directly involved or cooperate in labour inspection.

Cuba (ratification: 1954)

The Committee notes the detailed information provided by the Government in its reports in reply to the Committee's previous comments, as well as the attached documentation. In particular, it notes with interest that women constitute around 33 per cent of the total staff of the labour inspection services; that the wages of labour inspectors are higher than those of other workers in the public administration; that training is provided to each of them in relation to the branches of activity which they supervise within their specialization; and that the premises, means of transport and transport facilities, as well as compensation for expenditure on transport, meals and accommodation made available to labour inspectors are satisfactory.

The Committee notes that Legislative Decree No. 174 of 9 June 1947, determining offences against the legal provisions governing self-employed workers, sets the amount for the penalties applicable in the event of such offences, although a special provision provides that their amount may be revised by the Executive Committee of the Council of Ministers. The Committee emphasizes the value of establishing a rapid procedure for revising the monetary value of penalties with a view to ensuring that, even in a situation of monetary inflation, such sanctions remain sufficiently dissuasive, and it would be grateful if the Government would provide information and a copy of any relevant official text showing that the arrangement for the revision of penalties by the Executive Committee of the Council of Ministers meets this objective.

The Committee notes with interest that the annual inspection reports for 1996 and 1998 contain information on each of the subjects enumerated in *Article 21*, including statistics on cases of occupational disease, and it hopes that such complete reports will continue to be issued by the central inspection authority. However, the Committee notes that the annual report for 1997 has not been received by the ILO and that there is nothing to show that the reports which are transmitted have been published, and it reminds the Government that the publication of such reports is a requirement under the terms of *Article 20*, which also sets out the relevant time limits. The Committee would be grateful if the Government would take all appropriate measures relating to the requirements of this provision so that the information contained in these reports is accessible to any interested party and may give rise to reactions and comments, particularly by employers' and workers' organizations, in a constructive spirit. The Government is requested to provide information on any progress achieved in this respect.

Dominican Republic (ratification: 1953)

The Committee notes the Government's reports for the period ending May 1999 and the attached documents. It also notes the information available at the ILO on the progress of the establishment and completion of certain phases of the project for the modernization of labour administration in Central America with ILO cooperation (project MATAC-ILO). This shows significant progress in regard to the organization of the labour administration system, including the organization of a labour inspection system placed under the coordination of a central directorate of the Secretariat of State for Labour. The Committee notes in particular with satisfaction that Executive Decree

No. 75-99 under which Act No. 1491 of 1992 regarding the civil service and administrative careers now extends to the staff of the Secretariat of State for Labour as this measure gives labour inspectors the status of public officials, in accordance with *Article 6 of the Convention*. The Committee considers, in fact, that this is one of the essential conditions for application of the Convention in that it gives inspectors the necessary authority and impartiality in their relations with employers and workers. The Committee expresses the hope that the reorganization of the inspection system along with the enhancement of the status of labour inspection staff will be paralleled by an evolution, in the framework or as a result of the MATAC-ILO project, of labour legislation in accordance with the purposes of the Convention. In this regard, it emphasizes the need to give a legal basis to the powers of inspectors as laid down particularly in *Article 12(1)(a) and (b)*, which the Government states exists in practice, and by *Article 18* for which difficulties of application result, according to a preliminary study conducted in 1991 by the Inter-American Labour Administration Centre, from inadequate cooperation from the judicial authorities in pursuing offenders against labour legislation as well as the derisory nature of the fines imposed. The Committee would be grateful if the Government would supply regular information regarding progress in the activities undertaken to improve the effectiveness of the labour inspection system and their impact on application of the Convention in regard to the abovementioned provisions and the points raised in previous comments.

Ecuador (ratification: 1975)

The Committee notes the Government's reports for the period ending May 1999, and the attached documents.

Articles 10 and 16 of the Convention. The Committee notes that these two provisions are applied to the extent that is permitted by economic possibilities, material and human resources being a determining criterion in the frequency of inspection visits. The Committee also refers to a statement made by the Government in reply to a comment made by the Committee in 1998 under Convention No. 100 to the effect that unfortunately no inspections had been carried out. In this respect, the Committee is bound to emphasize the need, within the framework of a coordinated labour inspection system, of ensuring the effective application of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and it reminds the Government of the possibility of having recourse to the technical assistance of the ILO and international financial cooperation, for countries which so request, with a view to meeting the conditions for the establishment of such a system. The Government is therefore urged to take initiatives for this purpose and to provide information on the progress achieved in these initiatives.

Egypt (ratification: 1956)

With reference to its previous observation, the Committee notes with interest that the Government has taken the necessary measures for the preparation, publication and transmission to the ILO on an annual basis of a general report on the work of the inspection services. The Committee notes the detailed information contained in the annual reports from 1995 to 1999 and trusts that such reports will continue to be transmitted to the ILO and that, in particular, they will make it possible for the

Government to draw lessons for the future with a view to improving the working conditions and protection of workers in the exercise of their occupations.

The Committee is addressing a request on certain matters directly to the Government.

Ghana (ratification: 1959)

Further to its previous observation, the Committee notes the information supplied in the Government's reply. The Committee notes in particular with interest the information indicating the recruitment in 1996 of 23 extra inspectors and hopes that the Government will be in a position to indicate a tangible improvement in the effectiveness of the inspection service in regard to *Articles 10 and 16 of the Convention*.

The Committee is addressing a request in regard to the application of *Articles 5, 8, 20 and 21* directly to the Government.

Guinea (ratification: 1959)

The Committee notes the information contained in the Government's report. It also notes the transmission of the annual activities report of the regional inspectorate of N'Zérékore (*Guinée-Forestière*) for 1998. It notes that, according to this report, the regional structures of the labour inspectorate have not received any operational budget since 1990. The sole means of transport available consisted of a motorcycle in poor condition and no expenses were paid for professional travel. The grievances described in this report are intended to obtain a means of transport, an operational budget and the renovation of the administrative premises of the labour inspectorate. The Committee notes in this respect that, according to the information provided by the Government under *Article 11 of the Convention*, a study of structural adjustment measures in the labour sector was undertaken with a view to the allocation of a portion of the resources created by the increase in the public budget as operating credits for administrative bodies responsible for labour matters. The Committee would be grateful if the Government would provide information on the conclusions of this study once they are available, but as of now it requests the Government to provide detailed information on the material situation of the inspection services in each regional and local labour inspection structure, to indicate the measures which have been taken or are envisaged for their improvement and to describe the manner in which labour inspectors and supervisors are reimbursed their travelling and incidental expenses necessary for the performance of their duties.

The Committee also reminds the Government that an annual inspection report on the matters set out in *Article 21(a) to (g)*, should be published and transmitted to the ILO within the time limits set out in *Article 20*. It wishes to stress the importance that it attaches to compliance with these provisions, the application of which enables it to assess the extent to which the Convention is applied. The publication of annual inspection reports is also intended to inform employers and workers and their organizations of the activities of the labour inspection services and to allow them to express their opinions in this connection, in a spirit of constructive cooperation. The Committee trusts that the Government will take the necessary measures rapidly, so that these reports will in future be published regularly and transmitted to the ILO.

India (ratification: 1949)

The Committee notes that no annual inspection report, as envisaged in *Articles 20 and 21*, has been provided since 1989. As a result, the Committee does not have at its disposal the elements which it needs to assess the extent to which the Convention is applied in practice, and particularly the manner in which effect is given to *Article 16*, which requires that workplaces liable to inspection shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the legal provisions which come under the responsibility of labour inspectors. The Committee emphasizes that one of the requirements for the effectiveness of inspections is set out in *Article 12(a)*, and consists of the right which should be conferred upon inspectors to enter any workplace liable to inspection without previously notifying the employer or his representative with a view to inspecting the normal conditions of work, and it would be grateful if the Government would provide copies of the texts governing the right of inspectors to enter workplaces in each state. The Government is also requested to take the appropriate measures to ensure this right, in accordance with the above provision, and to provide information on these measures, in cases where this right is not granted, and particularly in states where the right of free entry is subject to the prior notification of the employer or his representative.

Italy (ratification: 1952)

The Committee notes with satisfaction the Government's report, the detailed information provided in reply to its previous comments and the abundant documentation on the legislative and practical measures taken with a view to a substantial improvement in the application of the Convention.

1. *Role of the labour inspectorate in the supervision and control of services engaged in activities related to the supervision of the legislation respecting conditions of work.* The Committee notes the information and documents indicating that the labour inspectorate is once again entrusted with duties relating to the supervision of occupational health and safety, which had previously been transferred to local health units and which had been criticized by employers' and workers' organizations. Although noting that the duties of the labour inspectorate in this field are still limited and only apply to workplaces characterized by major risks to health and safety, the Committee nevertheless notes that, in accordance with *Articles 4 and 5 of the Convention*, the labour inspectorate acts as a central authority and coordinates between the various services engaged in activities relating to occupational safety and health in all sectors of activity. The Committee would be grateful if the Government would indicate the manner in which the organizations of employers and workers have reacted to the legislative texts which have been adopted recently re-establishing the duties of the labour inspectorate in relation to occupational safety and health.

2. *Child labour.* With reference also to its general observation of 1999 concerning labour inspection and child labour, the Committee notes with particular interest the initiatives recently taken to combat child labour, and particularly the adoption of legislative measures respecting the strengthening of compulsory education and the drafting of a decree to give effect to European Directive No. 94/33/EC on the protection of young people at work. It hopes that the Government will transmit a copy of the above decree to the ILO once it has been published.

Libyan Arab Jamahiriya (ratification: 1971)

The Committee notes that the Government has not supplied the report in reply to the previous repeated comments but that the information requested would be provided by the ad hoc technical commission. It also notes that the annual report on the work of the labour inspection service provides some of the information requested under *Article 21 of the Convention* and does not appear to have been published as required by *Article 20*. The Committee also notes that no information has been supplied making it possible to ensure that employers' and workers' organizations have been informed of the data given in the annual inspection report in order to be able to give their opinion on the manner in which the Convention is or should be applied as provided in *Part V of the report form*. The Committee therefore requests the Government to supply, as soon as possible, a detailed report on the application of the Convention as well as replies to the Committee's previous comments.

Noting in point 16 of the annual general report of the labour, health and safety at work inspection services that the inspectors have undertaken a vast inspection operation in order to ensure that a certificate of non-contamination by the AIDS virus is supplied by each worker and placed in his personal file. The Committee also requests the Government to indicate in what way infected workers are guaranteed application of the provisions relating to the protection of workers while engaged in their work as laid down in *Article 2* of the Convention.

Malawi (ratification: 1967)

The Committee notes the reports covering the period ending in June 1999. It notes with interest that the project proposal on the strengthening of the inspectorate services submitted by the Government at the 87th Session of the International Labour Conference with a view to receiving international cooperation in the form of technical assistance from the ILO has been approved. The Committee hopes that the funds needed to carry out this project will be available in the near future.

With reference to its observation of 1995, the Committee notes with interest the information showing that there was an increase in the number of labour inspectors during that year (*Article 10 of the Convention*). It also notes that, according to the Government, there is a need to increase the budgetary appropriations for the training of labour inspectors (*Article 7*) and to provide the latter with the material means necessary for the performance of their duties (*Article 11*). The Committee again notes that the production and publication of an annual inspection report, the form and content of which are prescribed in *Articles 20 and 21*, are still impossible owing to the financial constraints mentioned by the Government in each of its reports. It nonetheless notes that, according to the Government, the statistics of industrial accidents and occupational diseases (*Article 21(f) and (g)*) are updated regularly. The Committee trusts that the Government will send them with its next report and that it will also be in a position to provide up-to-date information on the human and material resources available for performing the main functions of the system of labour inspection (*Article 3(1)*) together with information on the state of progress of the abovementioned cooperation project for the strengthening of the inspectorate services and on progress made in establishing the conditions necessary for applying the Convention.

Malaysia (ratification: 1963)

The Committee takes due note of the various activities and measures taken in recent years to strengthen the performance of the labour inspectorate. It also notes with interest the adoption of the Occupational Safety and Health Act, 1994, which supplements the provisions of the Factories and Machinery Act, 1967. In its previous comments, the Committee welcomed the many measures taken with a view to the rationalization of the use of human resources and the distribution of responsibilities in the field of labour inspection. It notes that the start-up of operations by the National Institute of Occupational Safety and Health, which was established in 1992, has relieved the Labour Department of a number of functions and has contributed to minimizing the involvement of labour officers in the planning and implementation of training activities for industry. It also notes that, as a result of the restructuring of the inspection services into two sections with different responsibilities, some 80 per cent of field inspectors are assigned to pure inspection duties and that as a result the number of inspections rose from 69,107 in 1993 to 83,667 in 1994. In its report for 1999, the Government refers to the adoption of a new approach to inspection which places greater emphasis on preventive measures. The media are used for educational programmes on various aspects of labour law, and consultations are organized with employers and workers at the workplace and in labour offices. The Committee hopes that the Government will not fail to provide information in future reports on the effects of these measures in the areas of labour legislation covered by the Convention.

The Committee is addressing a request directly to the Government on other points.

Mauritania (ratification: 1963)

With reference to its previous observation and the discussion in the Committee at the 88th Session of the International Labour Conference in June 2000, the Committee notes that the Government has not provided, as it was requested to do by the Conference Committee, a detailed report on the progress achieved in law and practice in the application of this priority Convention. Recalling that it was requested to take the necessary measures to ensure the adoption of a status for labour inspectors which is in conformity with *Article 6 of the Convention*, the Committee is therefore bound to repeat its previous observation, which read as follows:

The Committee notes the Government's report covering the period ending 1 September 1998 in reply to its earlier comments. The Committee notes that the report is absolutely identical to the one which covered the previous period ending 1 September 1997 and therefore contains no reply to the new requests of the Committee. The Committee reminds the Government of the need to supply regular information on changes and progress achieved in the spheres covered by this Convention as well as specific information on the points raised in the Committee's comments, where necessary.

1. The Committee again stressed in its previous observation the essential nature of the principle of stability of employment and independence of labour inspectors as regards all changes of government and improper external influences. It therefore reiterated the hope that regulations would be adopted for inspection staff, compatible with the terms of *Article 6 of the Convention* and with section 22 of the Labour Code of 1963; a draft of such regulations has already been drawn up with ILO assistance. In view of the Government's persistent failure, for over 30 years, to act in this regard, the Committee requests the

Government to take the necessary measures as soon as possible to ensure correct application of the Convention, and to supply information on all measures taken accordingly.

2. The Committee notes once again that, since 1987 and despite numerous requests, the Government has not sent a single annual inspection report to the ILO. It again stresses that these reports are an essential means of determining how the inspection system functions in practice and of ensuring that workplaces are inspected as often and as thoroughly as is necessary. The Government is therefore requested to fulfil this obligation and to take the measures necessary to ensure, as soon as possible, that the annual reports on the activities of the inspection services containing all the information required by *Article 21(a) to (g)*, will be published and transmitted to the ILO, in conformity with *Article 20* of the Convention.

3. The Committee is addressing a request concerning certain points already raised in its previous direct requests directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mozambique (ratification: 1977)

The Committee notes with satisfaction that, further to its comments, section 210(3) of the new Labour Code adopted under Act No. 8-98 of 20 July 1998 gives a legal basis to the prohibition in *Article 15(a) of the Convention* on labour inspectors having any direct or indirect interest in the undertakings or establishments under their supervision.

The Committee is addressing a request on other points directly to the Government.

Panama (ratification: 1958)

The Committee notes with interest the establishment by Decree No. 21 of 1997 of an inter-institutional technical committee on occupational health and safety. This permanent committee is responsible for the preparation, planning and coordination of action to promote the improvement of working conditions and environment. Noting that this committee includes two officials from the Ministry of Labour, the Committee of Experts would be grateful if the Government would provide information on its activities and on the matters which it addresses, and if it would indicate the manner in which the labour inspection services cooperate with the work of this committee, in accordance with *Article 5(a)*.

Qatar (ratification: 1976)

The Committee notes with satisfaction the Government's detailed reports for the periods ending successively in June 1997, May 1998 and May 1999, as well as the information contained in the annual inspection reports for 1996, 1997 and 1998, in accordance with *Article 21 of the Convention*. The Committee takes due note of the conformity with the Articles of the Convention of the legal provisions and practice described by the Government. In particular, it notes with interest the use made of the guidance provided in the ILO publication of 1996 entitled *Recording and notification of employment accidents and diseases* for the development of an effective system for this purpose.

The Committee also notes with interest the detailed information provided by the Government concerning the staff of the labour inspectorate, the proportion of women therein and the specific rule conferred upon them, particularly for the supervision of

enterprises employing female staff, and also on the resources made available to the staff for the discharge of its functions. The Committee hopes that the Government will continue to provide information on developments in the labour inspection system in each of its future reports and that annual inspection reports will continue to be prepared, published and transmitted to the ILO regularly and within the time limits set out in *Article 20*.

The Committee is addressing a request directly to the Government on certain points.

Saudi Arabia (ratification: 1978)

The Committee notes the Government's report and the information supplied in reply to its comments. It notes with interest that the social insurance service and employment offices have decided to cooperate in collecting statistics on occupational diseases which, hitherto, were not identified due to the fact that their symptoms appear only after several years and that they affect an essentially mobile population consisting of migrant workers who do not reside for long in the Kingdom. The Committee hopes that the Government will not fail to take the necessary measures, if necessary with the authorities in these workers' countries of origin, to organize an exchange of information on occupational diseases contracted during their employment in the Kingdom and that this information will be transmitted to the central labour inspection authority with a view to establishing the causes and employing the necessary resources to take action against risk factors. The Committee would be grateful if the Government would supply information on measures taken to this end and on the results achieved.

Spain (ratification: 1960)

The Committee notes the Government's report for the period ending June 1999, which includes explanations in response to the observations made previously by the General Union of Workers (UGT) concerning the application of the provisions of the Convention. The Committee also notes the detailed information provided in the annual inspection report for 1998. The Committee notes the adoption of Act No. 42 of 1997 to organize the labour and social security inspectorate, under which the labour and social security inspection system is composed of a central authority and, at the regional level, provincial inspection services under the competence of each of the autonomous communities (section 15(2) of the Act). The autonomous communities also participate in the labour inspection system and in ensuring its unity in coordination with the respective public authorities, the Sectoral Conference on Social Affairs and the territorial inspection commissions. The Committee also notes Decree No. 138-2000 approving the rules for the organization and operation of the labour and social security inspectorate. Finally, it notes with interest that, with a view to the effective implementation of the new Act on labour inspection, a substantial increase (around 5 per cent) in high-level inspection personnel was made to strengthen the staff between 1997 and 1998, and that a new increase was envisaged for 1999. The Committee would be grateful if the Government would provide information in its future reports on the impact of the new labour inspection system on the application of the legal provisions under its supervision.

The Committee is addressing a request directly to the Government on certain matters.

Sudan (ratification: 1970)

The Committee notes the Government's brief report and the statistical data on labour inspection activities in the *wilaya* of Khartoum. The Committee wishes once again to draw the Government's attention to the following points.

1. *Reporting obligations.* The Convention is one of the ILO's priority Conventions and, as such, gives rise to the obligation to transmit to the Office detailed biennial reports on any changes and developments in the application of each of its provisions. In each of its reports, the Government should provide, among other elements, information on changes in the relevant legislation, the staff of the labour inspection services, its composition by grade and speciality and its geographical distribution, the number and distribution by type of activity of workplaces liable to supervision by the labour inspectorate, and this information should cover the whole of the territory and not only part of it.

2. *Annual labour inspection reports.* The annual general reports on the labour inspection services should contain information allowing the central authority to have an overview of the situation and the effectiveness of the resources used, so that it can direct inspection activities more effectively. These annual reports also have the objective of bringing to the knowledge of workers, employers and their organizations the means employed and the results achieved, and of seeking their point of view on the action to be taken to improve the application of provisions respecting general conditions of work and occupational safety and health. While noting the few statistics provided concerning inspection activities in the *wilaya* of Khartoum, the Committee requests the Government to take the necessary measures for the regular publication and transmission to the ILO by the competent central authority, within the meaning of *Article 4 of the Convention*, in the time limits set out in *Article 20*, of annual inspection reports covering each of the subjects enumerated in *Article 21*.

The Committee is addressing a request directly to the Government on other points.

Swaziland (ratification: 1981)

Further to its previous comments in which it requested the Government to take measures to give effect to *Article 3(2), of the Convention*, the Committee notes with interest the indication concerning adoption of the Industrial Relations Act No. 1 of 2000 to establish a new industrial dispute resolution mechanism which will be provided by an independent body so that in future labour inspectors will be able to concentrate on their primary duties. The Committee would be grateful if the Government would supply a copy of the full text of this Act to enable it to ascertain the impact on the application of *Article 3(2)*.

The Committee notes with interest the detailed information contained in the 1998 inspection report which includes comparative statistical tables on a number of subjects covering the previous four years and providing indications on the frequency of meetings and the subjects discussed by the advisory boards in respect of the matters covered by the Convention. The Committee notes, however, with concern that the Pneumoconiosis Medical Board has found difficulty in operating because the asbestostotic patients concerned are no longer employed and cannot afford to pay the travel costs to attend the Board or to pay for the X-rays needed for re-examinations and therefore die sooner. The

Committee expresses the hope that the Government will implement appropriate measures to entrust labour inspectors with the task of identifying the persons concerned and that appropriate solutions will be found to alleviate their poverty and give them the care required by their state of health, if necessary resorting to technical cooperation and international funding with a view to developing social security measures for this purpose.

The Committee is addressing a request on other points directly to the Government.

Turkey (ratification: 1951)

The Committee notes the Government's report for the period ending July 1999 which contains detailed information showing the progress in practical resources, numbers of labour inspectorate staff and activities in the sectors covered as well as the results. The Committee notes the annual inspection reports as well as the comments made by the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Trade Unions of Turkey (TÜRK-İŞ). Referring also to its observation in 1998 on the previous comments of these two organizations, and noting that the Government has not expressed its views on the questions raised in these comments, the Committee requests the Government to do so in its next report.

Labour inspection and child labour. The Committee notes with interest the information concerning the progress in the project concerning the training of labour inspectors in the campaign against child labour in application of the Protocol signed at Ankara on 24 December 1996 in the framework of the agreement concluded with the IPEC programme in 1992. It notes in particular the considerable number of inspectors trained, as well as the organization established, and the technical and communication resources used for achieving the project objectives with the participation of trade unions, NGOs, the families of the children concerned and the institutions involved. Noting also with satisfaction the publication by the Ministry of Labour and Social Security in June 2000 of a report on implementation of labour inspection policy on child labour in Turkey and referring to its 1999 general observation, the Committee expresses the hope that the Government will be able to supply information regularly on the evolution of the subject, to record in the near future a considerable decrease in clandestine child labour in general and a tangible improvement in compliance with the legal provisions concerning the protection of young workers in particular.

Uganda (ratification: 1963)

The Committee notes the Government's reports, the information provided in reply to its previous comments and the attached documents. It also notes the draft legislation prepared recently with the technical assistance of the ILO in the context of a cooperation project with the United Nations Development Programme (UNDP).

1. *Socio-economic situation and labour inspection.* The Committee notes with concern the socio-economic impact of the epidemic of HIV infection. It notes the educational activities carried out by the Government and the health measures taken, but notes that the information provided by the Government and the conclusions of a report by a joint ILO/UNDP/EAMAT mission undertaken in 1995 on labour administration indicate that the structures of the labour inspection system are in a critical situation. The

decentralization of the organization and the management of services and personnel of the labour inspectorate is resulting in practice in serious shortcomings in supervising the application of legal provisions for which the labour inspectorate is responsible in an environment which is characterized by the very rapid growth in the number of national and foreign private industrial enterprises. Noting that the provisions of the Convention are not applied, the Committee wishes to draw the Government's attention to the importance, particularly in such a difficult economic, health and social situation, of ensuring the best possible protection for workers.

2. *Material and financial resources of the labour inspectorate (Articles 10, 11 and 16).* The Committee notes the Government's repeated statements concerning the crucial lack of means of transport and transport facilities and its consequences on workplace inspection. Furthermore, according to the report of the ILO/UNDP/LAMAT mission, the premises serving as offices for labour inspectors in some districts give rise to problems of accessibility for their users and are not equipped to meet the needs of the service. According to the Government, even before the decentralization of inspection services, difficulties were experienced in the application of the requirements set out in *Article 11* in view of the same budgetary constraints on personnel and means of transport in particular. The Committee notes that the inadequacy of the resources of the inspection services encourages a general laxity by employers with regard to their legal obligations respecting occupational safety and health and other conditions of work. The Committee wishes to emphasize once again, as it did in paragraph 214 of its 1985 General Survey on labour inspection, the economic and social value of labour inspection and the social cost of reducing its effectiveness. It trusts that measures will be taken, including having recourse to international cooperation, to ensure that the proportion of the national budget allocated to labour inspection is determined as a function of the priority nature of the objectives which it should be assigned in accordance with the Convention.

The Committee is addressing a request directly to the Government.

United Kingdom (ratification: 1949)

The Committee notes the Government's reports and the abundant documentation attached to them. It notes with satisfaction that, following the observations by the TUC regarding the inadequacy of the legislation in respect of certain labour law issues in connection with the provisions of the Convention, laws and regulations on the minimum wage, health and safety at work and the reporting of injuries, diseases and dangerous occurrences have recently been adopted and that a copy of them has been sent to the ILO. The Committee would be grateful if the Government would indicate the arrangements made or envisaged to ensure that labour inspectors will be in a position to perform their duties effectively in respect of the new tasks arising out of this new legislation.

The Committee is addressing a request directly to the Government in connection with its general observation of 1999.

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In addition, requests regarding certain points are being addressed directly to the following States: *Antigua and Barbuda, Australia, Austria, Bahamas, Bangladesh, Belize, Bolivia, Brazil, Central African Republic, Costa Rica, Democratic Republic of*

the Congo, Egypt, El Salvador, Gabon, Germany, Ghana, Grenada, Guatemala, Guyana, Ireland, Italy, Jamaica, Luxembourg, Malaysia, Mali, Malta, Mauritania, Mozambique, Nigeria, Panama, Peru, Qatar, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Solomon Islands, Spain, Sudan, Swaziland, Syrian Arab Republic, United Republic of Tanzania (Tanganyika), Tunisia, Uganda, United Kingdom, Venezuela, Viet Nam, Yemen, Zimbabwe.

**Convention No. 87: Freedom of Association and Protection
of the Right to Organise, 1948**

Algeria (ratification: 1962)

The Committee notes that the Government's report does not contain replies to its previous comments.

The Committee recalls that its earlier comments touched on the following points.

Article 3 of the Convention. The right of organizations to organize their activities and formulate their programmes without any interference from the public authorities. The Committee had noted that sections 1, 3, 4 and 5 of Legislative Decree No. 90-02 of 6 February 1990 on compulsory arbitration contain provisions which could jeopardize the right of workers' organizations to organize their activities and formulate their programme of action to defend the economic, social and occupational interests of their members including through recourse to strike, without interference from the public authorities.

With regard to Legislative Decree No. 92-03 of 30 September 1992, the Committee notes that the Government reiterates the reply given in its previous reports, that is, that the said Decree is not directed against the right to strike or the right to organize and that these provisions have never been implemented against workers exercising their right to strike peacefully. The Committee recalls however, that section 1, read in conjunction with sections 3, 4 and 5 of Decree No. 92-03, defines as subversive acts or acts of terrorism, offences directed, in particular, against the stability and normal functioning of institutions, through any action taken with the intention: (1) of obstructing the operation of establishments providing public service; or (2) of impeding traffic or freedom of movement in public places or highways, under penalty of severe sanctions including up to 20 years' imprisonment. The Committee therefore again requests the Government to take steps through legislation or regulation to ensure that none of these provisions may be applied against workers peacefully exercising their right to strike.

In respect of section 43 of Decree No. 90-02 of 6 February 1990, the Committee had noted that this provision allowed a strike to be prohibited, not only in essential services, the interruption of which would endanger the life, personal safety or health of the population, which the Committee has always considered admissible, but also when the effect of the strike is likely to engender an acute economic crisis. Moreover, article 48 of the Decree empowers the Minister or the competent authority, where the strike persists and after the failure of mediation, to refer, after consultation with the employer and the representatives of the workers, a collective dispute to the arbitration commission. The Committee wishes to recall that compulsory arbitration should only be used at the request of both parties and/or that arbitration to end a strike should only be imposed

when strikes occur in essential services in the strict sense of the term, or where the extent and duration of the strike could provoke an acute national crisis. It therefore again urges the Government to amend its legislation along the above indicated lines to bring it fully into conformity with the principles of freedom of association.

Antigua and Barbuda (ratification: 1983)

The Committee takes note of the Government's report.

In its previous comments, the Committee had recalled the need to amend sections 19, 20, 21 and 22 of the Industrial Court Act, 1976, which permit the referral of a dispute to the court by the Minister or at the request of one party with the consequent effect of prohibiting any strike action, under penalty of imprisonment, and which permit injunctions against a legal strike when the national interest is threatened or affected, as well as the overly broad list of essential services in the Labour Code. The Committee notes the Government's indication in its latest report that the interruption of all these services on the list of essential services in the Labour Code would endanger the life, personal safety or health of the whole or part of the population. The Government further states that the Minister is obliged to refer disputes to binding arbitration in cases of acute national crisis.

On the matter of essential services, the Committee notes the inclusion of the government printing office and the port authority in the list and considers that such services cannot be considered to be essential in the strict sense of the term. In this respect, the Committee would draw the Government's attention to paragraph 160 of its 1994 General Survey on freedom of association and collective bargaining wherein it states that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, the authorities could establish a system of minimum service in other services which are of public utility rather than impose an outright ban on strikes, which would be limited to essential services in the strict sense of the term. As concerns the Minister's power to refer disputes in cases of acute national crisis, the Committee notes that the power of the Minister to refer a dispute to the court under sections 19 and 21 of the Industrial Court Act would appear to apply to situations going beyond the notion of an acute national crisis. Under section 19(1), this authority of the Minister appears to be discretionary, since under section 21 this power may be used in the national interest which would appear to be broader than the strict notion of a specific situation of acute national crisis where the restrictions imposed must be for a limited period and only to the extent necessary to meet the requirements of the situation (see General Survey, 1994, paragraph 152).

In light of the above, the Committee once again urges the Government to indicate in its next report the measures taken or envisaged to ensure that the power of the Minister to refer a dispute to binding arbitration resulting in a ban on strike action is restricted to strikes in essential services in the strict sense of the term, to public servants exercising authority in the name of the State or in case of an acute national crisis. It further requests the Government to indicate the measures taken or envisaged to ensure that a binding referral of a collective dispute to the court can only be made at the request of both parties, and not any one of the parties as appears to be the case in section 19(2).

Argentina (ratification: 1960)

The Committee notes the Government's reports.

The Committee recalls that for several years its comments have been referring to the following provisions of Act No. 23551 of 1988 respecting trade union associations and implementing Decree No. 2184/90:

section 28, which requires the petitioning association, in order to contest the trade union status of an association, to have a "considerably higher" number of members; and section 21 of implementing Decree No. 467/88, which qualifies the term "considerably higher" by laying down that the association claiming trade union status should have at least 10 per cent more dues-paying members than the petitioning association;

section 29, which provides that a "trade union at the enterprise level may be granted trade union status only when another first-level association and/or trade union does not already operate within the geographical area or the area of activity or category covered";

section 30, which imposes excessive conditions for granting trade union status to unions representing craftsmen, occupations or categories of workers;

section 31(a), which grants privileges to associations enjoying trade union status in comparison with other associations in relation to the representation of collective interests other than collective bargaining;

section 38, which only permits associations enjoying trade union status, and not associations which are merely registered, to benefit from the check-off of trade union dues;

section 39, which only exempts associations with trade union status, and not associations which are merely registered, from taxation;

sections 48 and 52, which provide that only the representatives of associations which have been granted trade union status may enjoy special protection (trade union protection, *fuero sindical*);

the imposition of minimum services by the Government in the event of the failure of the parties to reach agreement (section 5 of Decree No. 2184/90).

The Committee notes the Government's indications that: (1) the current system with regard to trade union associations (Act No. 23551) dates from 1988 and its provisions show the intention of giving effect to the principles of Conventions Nos. 87 and 98 in a period of democratic reconstruction which replaced the obscurity of a de facto government which had limited respect for human rights, and the legislator therefore placed emphasis on strengthening the institutions which had suffered from repression and interference; (2) coincidentally, this was accompanied by the massive promotion by workers of the process of concentration into major trade union organizations; (3) the proliferation of workers' organizations at the enterprise level and trade union associations which are merely registered illustrates the search by the workers for different models of organization and representation and the deficiencies of the current legislation in promoting the defence of the interests of their members; and (4) the authorities indicate their total readiness to convene all the social partners with a view to making the relevant modifications to Act No. 23551 (in this regard the Government has

established by Decree No. 1096/00 of 21 November 2000 a joint tripartite committee) and achieving a draft text by consensus which can be submitted to the Congress and that the technical assistance of the International Labour Office will be essential for that purpose.

In this respect, the Committee takes due note of the Government's readiness to make the necessary changes to the Act respecting trade union associations with a view to bringing it into full conformity with the provisions of the Convention and requests the Government to provide information in its next report on any measure adopted in this respect. The Committee notes that the technical assistance of the Office is at the Government's disposal.

Finally, the Committee recalls that it had also referred to section 5 of Decree No. 2184/90 respecting the power of the Ministry of Labour and Social Security to determine the arrangements for the provision of minimum services in the event of a strike in essential services, in the absence of agreement between the parties. In this respect, the Committee notes with satisfaction that Decree No. 2184/90 has been repealed and that the new Decree No. 843/2000 respecting essential services permits strikes in essential services in the strict sense of the term. The Decree also provides that the parties shall reach agreement on the minimum services which shall be maintained during the dispute, and that the Ministry of Labour may determine such services where agreement is not possible (in no case may it impose coverage of greater than 50 per cent upon the parties).

Australia (ratification: 1973)

The Committee notes the information provided in the Government's report, in particular the adoption of the Industrial Relations Act, 1999 of Queensland which repeals the Workplace Relations Act, 1997 and the Industrial Organizations Act, 1997. The Committee also notes the decisions of the Australian Industrial Relations Commission (AIRC) and of various courts at the state and federal levels which were appended to the Government's report.

Federal jurisdiction

Articles 3 and 10 of the Convention. Organizing administration and activities to further and defend the interests of workers.

1. *The Workplace Relations Act, 1996.* The Committee previously noted the following discrepancies between provisions of the Workplace Relations Act, 1996 and the Convention:

Restrictions on the objectives of strikes. The Act effectively denies the right to strike in the case of the negotiation of multi-employer, industry-wide or national level agreements (section 170LI), which excessively inhibits the right of workers and their organizations to promote and protect their economic and social interests. It also prohibits industrial action with the aim of coercing an employer to make payments in relation to periods of industrial action (sections 166A and 187AB), and industrial action can lose protected status if it involves a demarcation dispute (a dispute (i) between rival organizations or within an organization as to the rights, status or functions of members; (ii) between employers and employees or between

members as to the demarcation of functions of employees; or (iii) concerning representation of industrial interests) (sections 4, 166A and 170MW), which also excessively limit the subject matter of a strike.

Prohibition of sympathy action. Sympathy action is effectively prohibited under the Act (section 170MW(4) and (6)). Industrial action also remains unprotected if it involves secondary boycotts (section 170MM).

Restrictions beyond essential services. The bargaining period can be terminated or suspended, thereby divesting industrial action of its protected status, where industrial action is threatening to cause significant damage to the Australian economy or an important part of it (section 170MW(3)). In addition, registration of an organization may be cancelled where it or its members engage in industrial action interfering with trade or commerce or the provision of any public service (section 294), which for practical purposes prohibits strikes in such circumstances.

The Government reiterates in its report that the Act does not expressly prohibit strike action (except in relation to the period during which a collective agreement under the Act is in operation) but rather provides for certain industrial action to be protected from civil liability; in its view, the conditions to be fulfilled before taking industrial action are reasonable and appropriate in the context of the national system as a whole. While noting the Government's comments, the Committee must again point out that given that "unprotected" strikes can give rise to an injunction, civil liability and dismissal of the striking workers (sections 127, 170ML, 170MT and 170MU), the legitimate exercise of the right to strike can, for all practical purposes, result in sanctions.

With respect to the right to strike in support of a multi-employer, industry-wide or national-level agreement, the Government states that the Act does not expressly limit or restrict the scope of the subject matter pertaining to the relationship between an employer and employee, but does provide immunities in respect of a proposed single-business agreement. The Committee recalls that where strike action is "unprotected" and therefore potentially subject to a wide range of sanctions, as in the case of action in support of multi-employer, industry-wide and national-level agreements, it is for all practical purposes prohibited. On the issue of strike pay, the Committee acknowledges the Government's statement that it is not incompatible with the Convention for an employer to refuse to pay wages to employees on strike. However, in the Committee's view, providing in legislation that workers cannot take action in support of a claim for such wages, is not compatible with the principles of freedom of association.

Concerning industrial action threatening to cause significant damage to the Australian economy, the Government stresses that the AIRC is not required to terminate the bargaining period (and thereby divesting the action of protected status) but rather has discretion to do so, and that conciliation and arbitration procedures are then available to the parties. In the view of the Committee, however, since there remains a very real possibility for workers and their organizations to be subject to sanctions for taking such strike action, industrial action threatening to cause significant damage to the Australian economy is essentially prohibited. The Committee recalls that strike action may be restricted or even prohibited in essential services, namely, those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey on freedom of association and collective bargaining,

1994, paragraph 159). However, prohibiting industrial action that is threatening to cause significant damage to the economy goes beyond the definition of essential services accepted by the Committee, as does the reference in the Act to action affecting trade, commerce and the provision of a public service.

The Committee again requests the Government to take measures to amend the provisions of the Workplace Relations Act referred to above, to bring the legislation into conformity with the requirements of the Convention.

2. *Trade Practices Act, 1974. Secondary boycotts.* In its previous comments, the Committee noted that section 45D, as amended (section 45D, 45DA and 45DB), continues to render unlawful a wide range of boycott activity directed against persons who are not the employers of the boycotters and that breach of this provision could be sanctioned by severe pecuniary penalties, injunctions and damages. While noting the Government's statement that the penalties imposed are maximum amounts, and that injunctive relief is not granted lightly, the Committee must again note with regret that the Act prohibits a wide range of boycott and sympathy action. The Committee again recalls that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is lawful. Since the provisions are not in conformity with the principles of freedom of association, sanctions should not be imposed. The Committee again expresses the firm hope that the Government will amend the legislation accordingly, and will continue to provide information as to the practical application of the boycott provisions of the Act.

3. *Crimes Act, 1914. Restrictions on strikes and boycotts beyond essential services.* The Committee recalls its previous comments requesting the Government to keep it informed of any progress made in repealing the provisions of the Act banning strikes in services where the Governor-General had proclaimed the existence of a serious industrial dispute "prejudicing or threatening trade or commerce with other countries or among the states" (section 30J), and prohibiting boycotts resulting in the obstruction or hindrance of the performance of services by the Australian Government or the transport of goods or persons in international trade (section 30K). The Government reiterates that it is considering the Committee's request; however, it notes that since no action has been taken under the relevant provisions for over 40 years, amending the Crimes Act would be given low legislative priority. The Committee takes due note of this information, and expresses the firm hope that the Government will take measures to amend the legislation to bring it into conformity with the national practice and the requirements of the Convention.

4. The Committee is also addressing certain matters directly to the Government concerning the Workplace Relations Act, 1996, and the Trade Practices Act, 1974.

State jurisdictions

Queensland. The Committee notes that the Industrial Relations Act, 1999 (which repealed the Workplace Relations Act, 1997, and the Industrial Organizations Act, 1997) provides that an organization may be deregistered if its members are engaged in industrial action that has prevented or interfered with trade or commerce or providing a public service (section 638), which in the view of the Committee results in the prohibition of strikes going beyond essential services, as discussed above in the context of the Federal Workplace Relations Act, 1996.

Northern Territory and Victoria. The Committee also notes that pursuant to the Northern Territory (Self Government Act), 1978, and the Victorian Commonwealth Powers (Industrial Relations) Act, 1996, the Federal Workplace Relations Act, 1996, is the principal legislation applying in the Northern Territory and Victoria.

South Australia. The Committee noted previously that pursuant to section 222 of the Industrial Employee Relations Act, 1994, the secondary boycott provisions of the Federal Workplace Relations Act, 1996, are applied as laws of the state and therefore referred to its corresponding comments concerning the Federal Workplace Relations Act, 1996. The Committee regrets that the Government limits its response to the comment concerning South Australia by stating that it considers that the establishment of conditions to be fulfilled before taking industrial action are reasonable and appropriate and not incompatible with the Convention.

The Committee again requests the Government to take measures to have the state legislation referred to above examined and amended in the light of the corresponding comments concerning the Federal Workplace Relations Act, 1996.

The Committee is addressing a request directly to the Government concerning Western Australia and New South Wales.

Azerbaijan (ratification: 1992)

The Committee notes the information contained in the Government's report. It recalls that its previous comments concerned the divergencies between the national legislation and the guarantees set forth in the Convention, namely:

- the restrictions on the right to strike (section 188-3 of the Criminal Code);
- restrictions on the political activities of trade unions (section 6(1) of Act No. 792 on trade unions of 24 February 1994).

1. *Right to strike.* With reference to its previous comments on the need to explicitly amend or repeal section 188-3 of the Criminal Code, which contains major restrictions on the right of workers to engage in collective action with a view to disrupting public transport, associated with penalties of up to three years' imprisonment, the Committee takes due note of the information supplied by the Government in its report to the effect that a reform of the legislation, including the Criminal Code, is currently under way and that the comments of the Committee of Experts have been transmitted to the bodies concerned. The Committee recalls that the right to strike is an intrinsic corollary of the right to organize protected by the Convention and that restrictions or prohibitions on the right to strike should be limited to public servants exercising authority in the name of the State or to essential services, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population, and it expresses the firm hope that section 188-3 of the Criminal Code will be amended or repealed in the very near future.

2. *Article 3 of the Convention. Right of workers to organize their activities and to formulate their programmes.* The Committee once again notes with regret that, by virtue of section 6(1) of Act No. 792 of 24 February 1994 on trade unions, these organizations do not have the right to engage in political activities, nor to associate with political parties or conduct joint activities with them or provide them assistance, including gifts, nor to receive any from them. The Committee reminds the Government that the complete

prohibition of trade unions from engaging in political activities is incompatible with the right of workers' organizations to organize their activities and formulate their programmes in full freedom. It therefore once again requests the Government to amend its legislation to eliminate the prohibition of any political activities by trade unions and to strike a balance between, on the one hand, the legitimate interests of organizations to express their point of view on issues of economic and social policy affecting their members and workers in general and, on the other hand, the separation of political activities in the strict sense of the term from trade union activities.

The Committee expresses the firm hope that the Government will take the necessary measures in the very near future to bring its legislation fully into conformity with the provisions of the Convention and it requests the Government to indicate in its next report any progress achieved in this regard.

Bangladesh (ratification: 1972)

The Committee notes the information provided in the Government's report, the statement made by the Government representative to the 1998 Conference Committee and the discussion that followed.

The Committee recalls that it has been commenting for many years on the following serious discrepancies between the national legislation and the provisions of the Convention: the exclusion of managerial and administrative employees from the right of association under the Industrial Relations Ordinance (IRO), 1969; restrictions on the right of association of public servants; restrictions concerning holding trade union office; excessive external supervision of the internal affairs of trade unions; the "30 per cent" requirement for initial or continued registration as a trade union; denial of the right to organize of workers in export processing zones (EPZs); restrictions on the right to strike.

The Committee notes with regret that, save for some developments in relation to EPZs discussed below, the Government practically reiterates the same arguments it has been making for many years and that, despite repeated observations to the same effect, serious discrepancies continue to exist between the national legislation and the Convention on the issues mentioned above. The Committee also notes that this total lack of progress, 28 years after the ratification of the Convention, was noted once again with great concern by the Conference Committee on the Application of Standards during its discussion of these issues in 1999. The Committee further notes that during that discussion, the Government's representative stated that all these points were examined by a tripartite Labour Code Review Committee (established in 1992, but which did not report), and that the Ministry of Labour had decided to set up a mechanism within the Ministry to "thoroughly examine the issue and make recommendations to correct any discordance between the Convention and the existing legislation". The Committee regrets to be unable, on this point as well, to note any progress whatsoever on these commitments of the Government.

As regards EPZs, whilst the arguments advanced are essentially the same as those of previous years (i.e. that union-free EPZs are an economic necessity to attract foreign investment, and that workers in these zones enjoy better facilities and service conditions than workers in other industrial sectors), the Committee notes that the Government indicates it is now taking necessary steps to form a labour welfare committee in EPZs. Recalling that workers in EPZs should have the same rights as other workers, the

Committee firmly hopes that said labour welfare committee will be set up rapidly, and requests the Government to provide information in its next report on concrete measures taken and progress achieved in this respect.

In these circumstances, the Committee is bound to refer to its previous detailed observations and, recalling once again that the Government may avail itself of the technical assistance of the ILO, urges it to amend its legislation accordingly in the very near future.

In addition, a request regarding certain points is being addressed directly to the Government.

[The Government is asked to report in detail in 2001.]

Barbados (ratification: 1967)

The Committee takes note of the information provided in the Government's report.

In its previous comments, the Committee had noted that section 4 of the Better Security Act, 1920, provided that any person who wilfully breaks a contract of service or hiring, knowing that this may endanger real or personal property, is liable to a fine of up to three months' imprisonment and recalled that, if this provision applied to strike action, it should be amended so that such penalties may only be imposed with respect to essential services in the strict sense of the term and that the sanctions should not be disproportionate to the seriousness of the violation. Noting the indication in the Government's latest report that this section has never been invoked, the Committee requests the Government to consider amending this provision so as to ensure that it may not be invoked in the case of strikes, with the possible exception of those in essential services in the strict sense of the term, and thus ensure that workers' organizations may carry out their activities and formulate their programmes without interference by the public authorities.

The Committee also notes the Government's indication that the draft legislation regarding trade union recognition is still at the consultative stage with the employers' and workers' representatives and that a copy of the text will be transmitted once the draft legislation has been reviewed and approved. The Committee requests the Government to keep it informed of any developments in this respect.

Belarus (ratification: 1956)

The Committee notes the Government's report. It also notes the following legislative texts: the Law on Trade Unions of 14 January 2000; the Labour Code of 1 January 2000; and Presidential Decree No. 2 of 26 January 1999 and its corresponding Regulations and Rules. The Committee wishes to raise the following points in respect of these texts.

Article 2 of the Convention, (a) Right of workers and employers to establish organizations of their own choosing without previous authorization. With reference to its previous comments, the Committee takes note of Presidential Decree No. 2 on some measures on regulation of activity of political parties, trade unions and other social associations which has required all previously registered trade unions at national, branch and enterprise level to re-register. The Committee first notes that section 3 of the Decree provides that the "activity of non-registered associations and of associations that have

not been registered shall be banned in territory of the Republic" and that "associations that have not been re-registered shall terminate their activity and shall be liquidated according to the established procedure". The Committee further understands that legal personality is dependent upon registration under the Decree. In this respect, the Committee would first recall that national regulations governing the constitution of organizations are not in themselves incompatible with the provisions of the Convention, however, they must not be equivalent to a requirement for "previous authorization", nor must they constitute such an obstacle that they amount in practice to a prohibition.

Section 3 of the Decree sets forth minimum membership requirements at the national, branch and enterprise level; for the latter, an organization must have at least 10 per cent of the workers at the enterprise as members in order to be registered. The Committee would recall that while a minimum membership requirement is not in itself incompatible with the Convention, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed (see General Survey on freedom of association and collective bargaining, 1994, paragraph 81). The Committee further understands that the notion of legal address necessary for registration under the corresponding Regulations and Rules has given rise to numerous denials of registration. In this respect, the Committee has considered that problems of compatibility with the Convention also arise where the registration procedure is long and complicated or when registration regulations are applied in a manner inconsistent with their purpose and the competent administrative authorities make excessive use of their discretionary powers and are encouraged to do so by the vagueness of the relevant legislation (see 1994 General Survey, paragraphs 68, 69 and 75).

In the light of the above, and given in particular the serious consequences under Decree No. 2 for non-registration (banning of activities and liquidation), the Committee requests the Government to consider amending the Decree so as to exclude trade unions from the scope of its application and, if necessary, to institute a more simplified registration process. In the alternative, it requests the Government to amend the Decree so that the last two subsections of section 3 concerning the banning of activities of non-registered associations and their liquidation do not apply to trade unions, to amend the 10 per cent minimum membership requirement at the enterprise level so as to ensure that the right to organize is effectively guaranteed, particularly in large enterprises, and to give the necessary instructions to ensure that the notion of legal address is not construed restrictively so that the right of workers to establish organizations of their own choosing is not hindered.

(b) Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee notes that the 1992 Trade Union Act, as amended on 14 January 2000, maintains the reference to "citizen" in sections 1 and 2 concerning the right to join trade unions of their own choosing. Furthermore, in the definitions section of the Labour Code of January 2000, "trade unions" are defined as a voluntary public organization that unites "citizens". In its previous comments, the Committee had recalled that the right of workers and employers, without distinction whatsoever, to establish and join organizations implied that any worker residing in the territory of a given State should enjoy the right to organize as provided for in *Article 2* of the Convention. While having noted the Government's indication that the Constitution

provided this right to all persons residing and working in the territory, the Committee had requested the Government to envisage taking measures to amend the Trade Union Act in order to harmonize it with the Constitution and other national legislation and so as to bring it into conformity with the Convention. The Committee notes with regret that this amendment was not made in January when other amendments were made to the Trade Union Act and that section 1 of the new Labour Code also maintains this notion of citizenship rights in its definition of trade union. It once again requests the Government to take the necessary measures to amend sections 1 and 2 of the Act, as well as the definition section 1 of the Labour Code, so that the right to organize is clearly not limited to nationals.

Article 3. (a) Right of workers' organizations to organize their activities in full freedom. In its previous comments, the Committee urged the Government to amend Order No. 158 of 28 March 1995, which established a list of essential services in which strikes were prohibited that went beyond the notion of essential services in the strict sense of the term. The Committee now notes with satisfaction that, with the entry into force in January 2000 of the new Labour Code, Order No. 158 has been effectively repealed.

The Committee notes, however, that section 388 of the Labour Code permits legislative limitations on the right to strike in the interests of national security, public order, health of the population, and rights and freedom of other persons. Furthermore, section 393 permits the President to postpone, or to stop, the strike for up to three months in the same abovementioned cases; yet section 388 provides that a strike may be carried out not later than three months from the date upon which it has been declared. The Committee would first recall the right of unions to organize their activities (*Article 3* of the Convention) implies the recognition of the right to strike and that this right may only be limited, or even prohibited, in cases of acute national crisis, or for public servants exercising authority in the name of the state or essential services in the strict sense of the term, that is to say only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, and requests the Government to confirm its understanding that sections 388 and 393 would only be used in such cases. As concerns the presidential power to postpone a strike for up to three months, potentially rendering illegal any strike action due to the limitation on the time period for exercising the strike once it has been declared, the Committee requests the Government to take the necessary measures to amend the legislation so that the powers under section 393 would not effectively render impossible the exercise of legitimate industrial action.

As concerns the requirements for strike notification under section 390 of the Labour Code, the Committee notes that these include a statement of the duration of the strike. The Committee considers that a requirement that the duration of a strike be announced when giving strike notice is contrary to the right of workers' organizations to organize their activities and formulate their programmes in full freedom. The right to strike is, by definition, a means of pressure available to workers and their organizations for the promotion and defence of their economic and social interests. The Committee therefore requests the Government to repeal the obligation to notify the duration of a strike when giving strike notice.

Furthermore, the Committee notes that strike notification must include proposals on minimum services to be carried out during the period of the strike and that the provision of such services is an obligation under section 392. The Committee would draw the Government's attention to paragraph 160 of its 1994 General Survey where it has considered that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in services which are of public utility. The Committee considers however that the notion of minimum service should be limited to such cases and not used excessively to require such a service in all undertakings, regardless of the limited impact the industrial action might have on third parties. Moreover, the Committee notes that, where the parties fail to agree on the extent of such a minimum service, the final determination will be made by the local executive and administrative body. In cases of disagreement concerning minimum services, however, the Committee considers that it is preferable for such disagreements to be resolved by an independent body. The Committee therefore requests the Government to amend the Labour Code so as to ensure that the final determination concerning the minimum service to be provided in the event of disagreement between the parties be made by an independent body and to further ensure that minimum services are not required in all undertakings but only in the situations outlined above or to ensure the safe operation of necessary facilities.

(b) *Right to elect their representatives in full freedom.* The Committee takes note of the instructions dated 11 February 2000 issued by the head of the presidential administration which calls upon the ministers and chairs of government committees to interfere in the elections of branch trade unions. It recalls that the autonomy of organizations can be effectively guaranteed only if their members have the right to elect their representatives in full freedom (*Article 3* of the Convention). The public authorities should therefore refrain from any interference which might restrict the exercise of this right, whether as regards the holding of trade union elections, conditions of eligibility or the re-election or removal of representatives (see 1994 General Survey, paragraph 112). The Committee therefore requests the Government to take the necessary measures to ensure that such interference may not occur, including through the revocation of the relevant instructions.

Article 5. The Committee notes that section 388 prohibits financial assistance from foreign legal persons to strike participants. The Committee draws the Government's attention to paragraph 197 of its 1994 General Survey wherein it considers that legislation which prohibits trade unions from receiving financial aid or subsidies from foreign organizations poses serious difficulties in respect of the right of organizations to affiliate with international organizations and receive the assistance and benefits which come from such affiliation. The Committee therefore requests the Government to take the necessary measures to amend this section so that national workers' organizations may receive assistance, even financial, from international workers' organizations, even when its purpose is to assist in the exercise of freely chosen industrial action.

The Committee is also addressing a request directly to the Government.

[The Government is asked to report in detail in 2001.]

Belgium (ratification: 1951)

The Committee takes due note of the detailed information contained in the Government's report.

The Committee recalls that it has been commenting for many years on the need to take measures for the adoption of objective, pre-established and detailed legislative criteria determining rules for the access of the occupational organizations of workers and employers to the National Labour Council, and that in this respect the Organic Act of 29 May 1952 establishing the National Labour Council still contains no specific criteria on representativeness, but leaves broad discretionary power to the Government. The Committee notes the Government's indications that works council elections have recently been held, that the results are still not definitive and that it would be premature at this stage to modify the arrangements for social dialogue in Belgium. The Government also states that reflection has been initiated at the national level concerning social dialogue and the issue of representativeness. While noting this information, the Committee once again expresses the firm hope that the Government will adopt legal provisions in the near future determining the criteria of representativeness, and requests the Government to indicate any progress achieved in this regard in its next report.

Belize (ratification: 1983)

The Committee notes that the Government's report has not been received.

In its previous comments, the Committee recalled the need to amend the Settlement of Disputes (Essential Services) Act of 1939, as amended by Ordinances Nos. 57, 92, 51 and 32 in 1973, 1981, 1988 and 1994 respectively, which empower the authorities to refer a dispute to compulsory arbitration to prohibit a strike or to terminate a strike in such services as postal, monetary, financial and revenue collecting services and transport services and services in which petroleum products are sold, which are not "essential services" in the strict sense of the term. The Committee had noted the Government's statement in a previous report to the effect that discussions were under way regarding the amendment of the list of essential services.

Referring to its previous comments, the Committee had noted with satisfaction that Ordinance No. 117 of 13 November 1998 excluded all revenue collecting services of the Government from the field of application of the Settlement of Disputes (Essential Services) Act.

Nevertheless, the Committee expresses its firm hope that the Government will pursue its amendment of the list of essential services so that restrictions on the right to strike apply only to the essential services in the strict sense of the term, whose interruption would endanger the life, personal safety or health of whole or part of the population and to public servants exercising a function of authority in the name of the State. It requests the Government to indicate in its next report the measures taken or envisaged in this regard and to provide a copy of amendments bringing national legislation into full conformity with the principles of freedom of association at an early date.

Benin (ratification: 1960)

The Committee notes the information contained in the Government's report, the case law communicated and Decree No. 99-436 of 13 September 1999 defining the different forms of trade union organizations and the criteria for representativeness.

1. *Article 2 of the Convention: The right to establish trade unions without previous authorization.* With reference to its earlier comments on the need to amend the 1998 Labour Code to remove the obligation to deposit trade union statutes with the competent authorities, including the Ministry of the Interior, in order to obtain legal recognition, under penalty of a fine, the Committee notes that according to the Government the deposition of statutes is not a prior condition to the establishment of trade unions but that it constitutes a condition of public announcement and that the fine which may be imposed in cases of non-respect of this provision is not severe, since its amount is from CFA35 to 350.

The Committee notes that the requirement to deposit the statutes with the Ministry of the Interior is more than a simple condition of public announcement and that the fine imposed can be CFA700 in recurrent cases, which could constitute a severe obstacle to the creation of a trade union. In this connection, the Committee recalls that under the terms of *Article 2* of the Convention workers and employers shall have the right to establish organizations of their own choosing without previous authorization. The Committee therefore again invites the Government to take the measures necessary to remove the requirement to deposit the statutes with the Ministry of the Interior on penalty of financial sanctions and thus bring the legislation into conformity with the Convention. It requests the Government to indicate in its next report the measures effectively taken in this regard.

2. *Article 2: The right of workers, without distinction whatsoever, to establish trade unions.* The Committee notes that section 2 of the Labour Code excludes seafarers from its application and stipulates that they are covered by the 1968 Merchant Marine Code. Noting that the Merchant Marine Code (Ordinance No. 38 PR MPTPT of June 1968) does not grant seafarers either the right to organize or the right to strike, which is an intrinsic corollary of trade union rights, and provides for sentences of imprisonment for breaches of labour discipline (sections 209, 211 and 215), the Committee again requests the Government to ensure that seafarers benefit from the guarantees of the Convention and to keep it informed of measures taken in this respect.

3. The Committee recalls the need to amend section 8 of Ordinance No. 69-14 PR MPTTRA of June 1969 concerning the exercise of the right to strike which allows prohibition of strikes in the private and public service where interruption of the service would harm the economy and the higher interests of the nation. It notes with interest that, under the terms of sections 1, 2 and 13 of the Bill concerning the exercise of the right to strike, civil servants, like other workers, have the right to strike and bargain collectively. The Committee notes that the Bill in question constitutes a step towards the application of the Convention with regard to the minimum service to be maintained in the event that a strike in strategic sectors would endanger the health or the safety of the whole of part of the population and provides for the repeal of Ordinance No. 69-14 PR MPTTRA. The Committee notes that examination of this draft has been placed on the agenda of the May/June 2000 session of the National Assembly. It expresses the firm

hope that the Bill will be rapidly adopted and promulgated and requests the Government to indicate in its next report information regarding the progress made in this regard.

4. The Committee notes nonetheless, that under the terms of section 7 of the Bill concerning the exercise of the right to strike, workers' organizations are obliged to give the competent authorities advance notice before resorting to strike action. Under section 8 of the draft, the advance notice must indicate, *inter alia*, the proposed length of the strike. The Committee considers that requiring the employees and their organizations to specify the length of a strike amounts to restricting the right of workers' organizations to organize their administration and activities and to formulate their programmes. The right to strike is, by definition, a means of pressure available to workers and their organizations for the promotion and defence of their social and economic interests and achieve satisfaction in their claims. The Committee therefore requests the Government to eliminate the obligation to indicate in the notice the length of the strike referred to in the notice, and asks it to include details in its next report on the measures effectively taken in this connection.

Bolivia (ratification: 1965)

The Committee notes the Government's report as well as the answers and additional legal information it has sent in its reply to the comments the Committee has been making on the application of the Convention for many years now. These touch on the following points:

- (1) The exclusion of agricultural workers from the scope of the General Labour Act of 1942, and thus from the rights and guarantees of the Convention in regard to agricultural workers (section 1 of the General Labour Act and Regulatory Decree).
- (2) The refusal of the right to organize for public servants (section 104 of the General Labour Act of 1942).
- (3) The requirement that 50 per cent of the workers in an enterprise give their agreement in order to constitute a trade union when it concerns an industry (section 103 of the General Labour Act).
- (4) The wide powers of supervision conferred on the labour inspectorate over trade union activities (section 101 of the General Labour Act).
- (5) The requirement of Bolivian nationality for eligibility to trade union office (section 138 of Regulatory Decree No. 224, and of having permanent employment in the enterprise (sections 6(c) and 7 of Legislative Decree No. 2565 of June 1951).
- (6) The possible dissolution of trade union organizations by an administrative decision (section 129 of Regulatory Decree No. 224, of 23 August 1943, in application of the General Labour Act).
- (7) Restrictions on the right to strike (a majority of three-quarters of the workers of the enterprise to call a strike) (section 114 of the Act and section 159 of the Regulatory Decree); the unlawful nature of general and sympathy strikes, which are liable to penal sanctions (sections 1 and 2 of Legislative Decree No. 2565 of 1951), the unlawful nature of strikes in banks (section 1(c) of Supreme Decree No. 1959 of 1950), and the possible imposition of compulsory arbitration by decision of the executive power to put an end to a strike, including in services other than those essential in the strict sense of the word, that is to say, with the inclusion of some

whose interruption would not endanger the life, personal safety or health of the whole or part of the population (section 113 of the General Labour Law).

- (8) The observations submitted by the Bolivian Central of Workers regarding the dismissing of airport workers at the SABSA enterprise following a strike held to call for application of an arbitration decision in their favour.

I Article 2 of the Convention (the right of workers, without distinction whatsoever, to establish organizations of their own choosing)

A Agricultural workers

The Committee stressed the importance of guaranteeing freedom of association and the right to organize to all those working in rural areas, whether wage earners, labourers, or self-employed workers. The Committee again requests the Government to supply a copy of the draft Supreme Decree on regulations on salaried work (which, according to the Government, would abolish the exclusion, under section 1 of the General Labour Act, of agricultural workers from the scope of this Act) and firmly hopes that legal measures will be adopted as soon as possible to guarantee that this category of workers enjoys freedom of association.

B Public servants

The Committee notes with regret that under section 7 of the Act on the Statute of the Public Service of 1999, freedom of association is not extended to this category of workers and that section 104 of the General Labour Act is upheld, under which public servants are refused the right to organize, irrespective of their rank and category. The Committee again urges the Government to adopt as soon as possible the measures needed to ensure that this class of worker enjoys freedom of association and the right to organize within the shortest time possible.

C The requirement that an excessively high number of workers give their agreement in order to constitute a trade union (50 per cent of the workers in an enterprise)

The Committee notes that, in its earlier report, the Government, stated its intention of carrying out the amendment requested by the Committee, but that the Central of Bolivian Workers raised politico-ideological objections at the time. The Committee notes that the Government provides no information in its latest report on the desired amendment of this section which, according to the Government, will be considered under the Modernization of Labour Relations Programme, which will be duly submitted to the social partners with a view to adoption by consensus.

The Committee considers that section 103 of the said Act sets a percentage which, in itself, is too high and could hinder the constitution of a trade union in an industry; it also has the indirect result of making it impossible to establish other organizations representing workers' interests in an enterprise. It therefore again asks the Government to bring its legislation into line with the Convention as soon as possible, by

means of wording acceptable to the social partners, which would, for example, include the concept of more representative trade unions.

II. Article 3 (the right of workers' organizations to organize their administration and activities and to formulate their programmes, without interference by the public authorities)

A. Wide powers of supervision conferred on the labour inspectorate over trade union activities

The Committee recalls that the Government, in its earlier report, stated that a Supreme Decree had been promulgated which regulated the participation of Ministry of Labour inspectors in the deliberations of trade unions, and that under this Decree, inspectors shall only take part at the express and duly established request of the interested party. The Committee may now only express its surprise at learning from the latest report of the Government that the abovementioned Decree is once again at the drafting stage and, moreover, is under study by the Political and Social Analysis Unit.

The Committee again requests the Government to supply a copy of this Supreme Decree. It further stresses the need to adopt the necessary measures to bring the legislation into line with the Convention as soon as possible.

B. The requirement of Bolivian nationality for eligibility to a trade union office (the right of workers' organizations to elect their representatives in full freedom) and of having permanent employment in the enterprise

The Committee recalls that the Government, in its last report, stated that the requirement of holding permanent employment in the enterprise was ineffective and non-applicable in the country, but that provisions were being prepared in relation to both requirements to incorporate them in the new Bolivian legislation. The Committee notes that, in its latest report, the Government, without giving information on the abolition of these sections, indicates that this question will be considered under the Modernization of Labour Relations Programme, which will be submitted to the social partners with a view to its adoption by consensus.

The Committee again urges the Government to take steps to ensure the rapid harmonization of the legislation with this Article of the Convention, by the express removal of these restrictions.

III. Article 4 (the right of workers' organizations not to be liable to dissolution by administrative authority)

The Committee recalls that, according to the Government's earlier report, a Supreme Decree of 11 June 1999 provides that a ministerial decision dissolving a trade union organization must be transmitted automatically to the labour courts. The Committee notes from the latest report of the Government, that this order of dissolution will not be in force until the judicial authority has given its decision.

However, recalling that under this Article of the Convention workers' organizations may not be liable to be dissolved by administrative authority, the Committee firmly hopes that in the very near future the Government will take steps to amend its legislation such that dissolution may only be ordered by a legal authority, and not by an administrative authority.

IV Articles 3 and 10 (the right of workers' organizations to formulate their programmes to defend the professional and socio-economic interests of their members, without administrative interference)

A Restrictions to the right to strike

The Committee notes that in its earlier report, the Government indicated that this question would be handled during the updating of the current labour legislation, a process which had already begun. The Committee is therefore surprised to learn from the latest report that these matters are only "to be considered under the Modernization of Labour Relations Programme, which will be submitted to the social partners with a view to its adoption by consensus".

The Committee again urges the Government to ensure that the various provisions which hinder the free exercise of the right to strike be amended without delay in order to align its legislation with these principles of freedom of association.

V Observations submitted by the Central of Bolivian Workers (COB)

The Committee trusts that the arbitration decision in favour of the airport workers at the SABSA enterprise has been applied, and requests the Government to supply information in this connection.

The Committee firmly hopes that the Government's next report will contain all information regarding the concrete measures adopted to amend the legislation (with copies of the pertinent legislation) on which it has been commenting for many years, and that this legislation will reflect the requirements of the Convention.

Bosnia and Herzegovina (ratification: 1993)

The Committee notes with regret that the Government's report has not been received.

The Committee requests the Government to provide detailed information in reply to the questions raised in the report form concerning the application of this fundamental Convention.

The Committee also requests the Government to provide the text in force of the Labour Code as well as the texts governing freedom of association, the right to organize, the settlement of collective disputes and the right to strike.

Bulgaria (ratification: 1959)

The Committee notes the information provided in the Government's latest report, as well as the observations made by the Confederation of Independent Trade Unions in

Bulgaria (CITUB) accompanied with the Government's report. The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1989 (see 316th Report, paragraphs 163-195, and 320th Report, paragraphs 299-329, respectively).

Article 3 of the Convention. The Committee recalls that its previous comments concerned the need to amend section 11(2) of the Act of March 1990 regarding the settlement of collective labour disputes, which provides that the decision to strike shall be taken by a simple majority of the workers of the enterprise or the unit concerned. It notes that the Government has merely reiterated the provisions of this Act, but has not given any indication as to measures taken to amend the section so as to ensure that account in a strike ballot would only be taken of the votes cast and that the quorum is fixed at a reasonable level. It therefore once again requests the Government to indicate in its next report the measures taken or envisaged to bring its legislation into full conformity with the Convention in this respect.

Furthermore, as concerns the provision of compensatory guarantees for workers in the energy, communications and health sectors whose right to strike is denied, the Committee notes that the Government refers to sections 3-7 of the Act regarding the settlement of collective labour disputes and to section 4 of the Labour Code concerning voluntary arbitration. In this regard, the Committee would draw the Government's attention to paragraph 164 of its 1994 General Survey on freedom of association and collective bargaining which provides in particular that the compensatory guarantee procedures should provide sufficient guarantees of impartiality and rapidity, arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely. The Committee recalls the Government's indication in its previous report concerning new developments in the field of peaceful settlement of collective disputes. It requests the Government to indicate in its next report the measures taken or envisaged to ensure that workers who are restricted in their right to strike have machinery available to them which receives the confidence of all parties concerned in the event of deadlock.

The Committee notes the observations made by the CITUB concerning the right to organize and the right to strike under the Civil Servants Act of 1999. In particular, the Committee notes that the Civil Servants Act restricts the right to strike to the carrying and placing of suitable signs and symbols, protest posters and armbands. It recalls in this respect that restrictions on the right to strike should be limited to public servants exercising authority in the name of the State (see General Survey, *op. cit.*, paragraph 158). It therefore requests the Government to specify the types of state employees covered under section 2 of the Act, in particular indicating those whom special legislation grants the statute of state employee and whether postal workers, teachers or workers in state enterprises are covered by the Act. It further requests the Government to indicate the machinery available for resolving collective disputes for public servants who have been restricted in their right to strike.

The Committee would also draw the attention of the Government to the availability of the technical assistance of the Office in respect of the abovementioned matters should the Government so desire.

Burkina Faso (ratification: 1960)

The Committee notes the information contained in the Government's report.

The Committee recalls that its previous comments concerned the need to amend sections 1 and 6 of Act No. 45-60/AN of 25 July 1960, under which public servants may be required to perform their duties in order to ensure the continuity of the administration and the safety of persons and property. In this regard, the Committee recalled that it would be advisable to restrict the public authorities' power to requisition to cases in which the right to strike may be limited or prohibited, namely where public servants exercise authority in the name of the State, in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis (see the 1994 General Survey on freedom of association and collective bargaining, paragraphs 152, 158 and 159). In its latest report, the Government indicates that experience of the use of the power of requisitioning in practice in the event of strikes is the subject of different opinions in relation to the interests of the parties and that this difference of opinion is related to the fact that the legislation gives no indication of what is meant by essential services, nor enumerates them in a limitative or exhaustive manner. As a consequence, the Government states that it envisages a concerted re-reading of the legislation to achieve a convergence of views on the concept of essential services.

The Committee once again requests the Government to provide detailed information in its next report on the application of this provision in practice, and particularly to indicate the requisition orders issued during the period covered by the report and the legislative measures taken or envisaged to amend sections 1 and 6 of Act No. 45-60/AN of 25 July 1960, issuing regulations concerning the right to strike of public servants and state employees, with a view to bringing its legislation into conformity with the principles of freedom of association.

Burundi (ratification: 1993)

The Committee notes that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comment, which reads as follows:

The Committee had noted the information contained in the Government's report and particularly the entry into force of the Transitional Constitutional Act which recognizes the right to organize and the right to strike (sections 30 and 37). It recalled that its previous comments concerned the following:

1. *Trade union rights for public servants.* The Committee had noted that section 14 of the Labour Code excludes public servants and magistrates from its scope. It notes that according to the Government, the Statute of public servants provides in section 29 for the right to organize but there is still no legal text providing measures for the exercise of the right to strike. The Government also indicates that the Statute of magistrates provides for the right to organize. In this regard, the Committee requests the Government to send it copies of the Statute of public servants and the Statute of magistrates currently in force as well as the text fixing the means of exercising the right to strike for public servants as soon as it is adopted.

2. *Trade union rights for minors.* The Committee had noted that section 271 of the Labour Code provides that minors under the age of 18 years must obtain explicit authorization from the parent or guardian to join a trade union. The Committee takes due note of the Government's statement according to which no minor can perform an act of a legal nature without the authorization from his or her parents. However, the Government indicates that it could abolish this authorization concerning the decision to join a trade union. The Committee requests the Government to send it a copy of the text amending this provision as soon as it is adopted.

3. *Election of trade union leaders.* The Committee noted that the Labour Code sets certain conditions for holding the position of trade union leader or administrator.

Criminal record (section 275 of the Labour Code). This section provides that trade union leaders or administrators must not have served a definitive term of imprisonment of more than six months. The Committee notes the Government's statement that court decisions have found workers guilty of misuse of funds but that it does not have access to these judgements. In this regard, the Committee recalls that conviction for an act, the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties, should not constitute grounds for disqualification from trade union office. It also requests the Government to provide a copy of the Criminal Code in force.

Belonging to the respective occupation (section 275). This section also provides that the administrator or trade union leader should belong to the occupation or trade for at least one year. In this regard, the Government indicates that the Labour Code was adopted in full consultation with the social partners and that they had all agreed on the requirements to be a trade union officer. In this respect, the Committee has always considered that the provisions which require all candidates for trade union office to belong to the respective occupation or enterprise are contrary to the guarantees set forth in the Convention. Provisions of this type infringe the organization's right to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out trade union duties or by depriving unions from the benefits of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. Moreover, there is also a real risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office (see General Survey on freedom of association and collective bargaining of 1994, paragraph 117). The Committee again requests the Government to modify its legislation by accepting the candidature of persons who worked previously in the respective occupation or by lifting this requirement for a reasonable period of time for trade union officers.

4. *Articles 3 and 10 of the Convention. The right of workers' organizations to organize their administration and activities to further and defend the interests of their members.* The Committee had noted that the series of compulsory procedures prior to taking strike action laid down in the Labour Code (sections 191-210) would suggest that the minister was empowered to prohibit any strike. The Committee notes that the Government provides information on five strikes that have occurred since 1993 in the public sector as well as two strikes in the private sector.

The Government adds that it is aware of the necessity to clarify the modalities concerning the exercise of the right to strike and that a draft text exists already on this matter and will be examined by the National Labour Council. The Committee requests the Government to send it a copy of the said text as soon as it will be adopted.

The Committee had also noted that, pursuant to section 213 of the Labour Code, a strike is legal after a vote approved by a simple majority of the employees of the workplace

or the enterprise. In this regard, the Government indicates that in practice a vote of the workers concerned is not necessary as long as there exists a consensus to call a strike. On this point, the Committee is of the opinion that it would be advisable for the Government to take measures in order to put its legislation in conformity with its practice.

The Committee hopes that the Government will adopt the necessary measures in light of the above comments to bring its national legislation into full conformity with the Convention.

Cameroon (ratification: 1960)

The Committee notes that the Government's report has not been received. It nevertheless notes the statements by the Minister of Labour to the Conference Committee in June 2000 and the detailed discussion which followed. The Committee notes that the government representative reiterated his previous statements to the effect that Act No. 68/LF/19 of 18 November 1968 respecting trade unions or occupational associations not governed by the Labour Code, and section 6 of the Labour Code of 1992 are in the process of being amended. Furthermore, the government representative indicated that, in practice, although the texts have not yet been amended, freedom of association exists in practice and trade unions now operate normally in the public service. These trade unions operate without any interference by the Government in their establishment or in the calling and holding of strikes. Finally, the government representative provided the document by which the Central Public Sector Trade Union Organization (CSP) was established.

While noting this information concerning the application of the Convention in practice, the Committee recalls that its previous comments concerned the following points.

1. *Article 2 of the Convention. Previous authorization.* The Committee has been pointing out for several years that Act No. 68/LF/19 of 18 November 1968, under which the existence in law of a trade union or occupational association of public servants is subject to the previous approval of the Minister for Territorial Administration, and section 6(2) of the Labour Code of 1992, under which persons forming a trade union that has not been registered and who act as if the said union has been registered shall be liable to prosecution, are not consistent with *Article 2* of the Convention. The Committee once again urges the Government to amend its legislation in the near future to ensure that workers, including public servants, have the right to form organizations of their own choosing *without previous authorization*.

2. *Article 5. Previous authorization for affiliation to an international organization.* The Committee notes once again that section 19 of Decree No. 69/DF/7 of 6 January 1969 provides that trade unions or occupational associations of public servants may not join a foreign occupational organization without obtaining prior authorization from the minister responsible for "supervising fundamental freedoms". In this respect, the Committee noted the Government's previous statements to the effect that this Decree is issued under Act No. 68/LF/7 of 19 November 1968 and will be brought into conformity with the Convention once the new Act on civil servants' unions is promulgated. The Committee once again urges the Government to amend its legislation in the very near future to abolish the need for previous authorization for affiliation to an international organization, which is contrary to *Article 5* of the Convention.

[The Government is asked to report in detail in 2001.]

Canada (ratification: 1972)

The Committee notes the Government's report, the conclusions and recommendations of the Committee on Freedom of Association in the various cases concerning Canada, and the discussions in the Conference Committee on the Application of Standards in June 1999.

I. Issues common to several jurisdictions

A. Alberta, Ontario, New Brunswick

Right to organize of certain categories of workers

The Committee once again notes that workers in agriculture and horticulture in the provinces of Alberta (section 2(2)(e) of the Labour Code), Ontario (section 3(b) and (c) of the amended Labour Relations Act of 1995) and New Brunswick (section 1(5)(a) of the Labour Code) are excluded from the coverage of labour relations legislation and thereby deprived of the protection envisaged therein with regard to the right to organize and collective bargaining. Furthermore, with regard to Ontario, the Committee recalls the conclusions of the Committee on Freedom of Association in case No. 1900 (308th Report, paragraphs 139-194, and 316th Report, paragraphs 28-30) and observes with regret that several other categories of workers are excluded from the industrial relations legislation (domestic workers, architects, dentists, land surveyors, lawyers and doctors) under the terms of section 1(3)(a) of the amended Labour Relations Act, 1995. The Committee notes the information provided by the governments of Ontario and Alberta to the effect that workers in agriculture and horticulture are entitled to form associations and participate in voluntary negotiations with their employers. It also notes the comments of the government of New Brunswick that the requirement that a bargaining unit comprise at least five agricultural workers to engage in collective bargaining is necessary to free small family agricultural holdings from inappropriate legislative constraints.

The Committee is nevertheless bound to emphasize the fact that all workers, without distinction whatsoever, with the sole possible exception of the armed forces and the police, must be able to organize freely and benefit from the necessary protection to ensure observance of the Convention.

The Committee urges the governments of the provinces concerned to take the necessary measures to amend the legislation in question in order to bring it into full conformity with the Convention and to keep the Committee informed in this respect. The Committee notes that the Supreme Court of Canada has granted leave to hear an appeal against the dismissal by the Ontario Court of Appeal of a challenge to the exclusion of agricultural workers and it requests the Government to forward the text of the judgement when it is delivered.

B. Prince Edward Island, Nova Scotia, Ontario

Trade union monopoly established by law

The Committee notes that certain provincial laws designate by name the union recognized as the bargaining agent (Prince Edward Island: Civil Service Act, 1983; Nova Scotia: Teaching Professions Act; Ontario: Education Act and Teaching Professions Act). The Committee recalls that, although it considers a system in which a single bargaining agent can be accredited to represent workers in a given bargaining unit and bargain on their behalf to be compatible with the Convention, it nevertheless considers that a trade union monopoly established or maintained by the explicit designation by name of a trade union organization in the law is in violation of the Convention.

The Committee requests the governments of these provinces to repeal from their respective legislation the designation by name of individual trade unions and to keep it informed in this regard.

II. Matters relating to specific jurisdictions

A. Alberta

1. *Right to strike.* With reference to its previous comments concerning section 117.1 of the Public Service Employee Relations Act, as amended in 1983 by Act No. 44, which bans strikes by all hospital workers, including kitchen staff, porters and gardeners, and therefore goes beyond the admissible restrictions to the right to strike, the Committee notes that, according to the Government, the right to strike and to lockout depends on the nature of the organization providing the service, rather than on the type of work performed by employees. The Committee nevertheless recalls that the right to strike is an intrinsic corollary of the right to organize and any restriction should be limited to public servants exercising authority in the name of the State or to essential services in the strict sense of the term (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 179).

The Committee requests the Government to amend its legislation to ensure that kitchen staff, porters and gardeners are not denied this fundamental right.

2. *Right to organize of university staff.* The Committee recalls that for several years it has been commenting on the need: (a) to repeal the provisions of the University Act which empower the Board of Governors to designate the academic staff members who are allowed, by law, to establish and join a professional association for the defence of their interests; and (b) to introduce an independent system of designation where the parties fail to reach agreement upon such designation. The Committee notes the ruling by the Alberta Court of Appeal in the Lakeland College case, which was however confined to the issue of whether the power of designation had in that instance been used in a fair and responsible manner. The Committee recalls that all workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing without previous authorization.

The Committee requests the Government to repeal the provisions in question and to keep it informed in its next report of the measures taken in this respect.

B. British Colombia

The Committee notes the adoption in April 2000 of a special Act to bring an end to a collective dispute in certain provincial school commissions (Bill 7 on public education support staff collective bargaining assistance), which raises a number of difficulties in relation to the Convention (section 2: prohibition of the right to strike; sections 4, 5 and 6: the appointment by the Minister of Labour of an industrial inquiry commission entrusted, if necessary, with determining by itself the terms of a collective agreement; section 11: the broad powers of the Minister concerning the structure, role, establishment, responsibilities and rules of employers' and workers' organizations).

The Committee requests the Government to indicate whether this Act was repealed on 31 July 2000 in whole or in part, as provided for in section 13, and to keep it informed of any development relating to its application.

C. Manitoba

1. The Committee notes the amendments made to the Labour Relations Act by Bill 44. Section 87.1(1) of the Labour Relations Act provides that, when 60 days have elapsed since the commencement of a strike or lockout and conciliation has been used, one of the parties may apply to the Labour Board of Manitoba to settle the provisions of a new collective agreement. The Committee recalls that arbitration imposed by the authorities at the request of one party is contrary to the principle of voluntary bargaining and the autonomy of the parties (see General Survey, *op. cit.*, paragraph 257).

The Committee requests the Government to take the necessary measures to ensure that recourse to arbitration for the settlement of conflicts is voluntary.

2. The Committee notes the amendments made to the Public Schools Act by Bill 42, including:

- section 110(1), which prohibits strikes by teachers;

- sections 112(3) to 112(5), which envisage penalties of up to CAN\$2,000 a day for any bargaining agent or trade union officer who declares or authorizes a strike by teachers;

- sections 100, 103 and 108, which provide that when at least 90 days have elapsed since the commencement of collective bargaining and no collective agreement has been concluded, one of the parties may initiate arbitration proceedings to decide the matters in dispute between them with a view to the preparation of a collective agreement embodying all matters settled in the award.

The Committee recalls that the right to strike should only be restricted for public servants exercising authority in the name of the State and in essential services in the strict sense of the term. It also recalls that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association, which is not the case in this instance. Finally, the Committee emphasizes that arbitration imposed by the authorities at the request of one party is contrary to the principle of the voluntary negotiation of collective agreements and the autonomy of the partners.

The Committee requests the Government to take measures to amend its legislation so that teachers are not denied the right to strike, the exercise of this right does not result

in them being penalized and recourse to arbitration for the settlement of disputes is voluntary.

D. Ontario

1. The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1975 (316th Report, paragraphs 229-274; 321st Report, paragraphs 103-118) concerning the Prevention of Unionization (Ontario Works) Act (Bill 22) and the Economic Development and Workplace Democracy Act (Bill 31).

The Committee notes that Bill 22 provides that persons taking part in community participation activities are prohibited from joining a trade union within the general framework established by the 1995 Industrial Relations Act and it recalls that the right to organize must be guaranteed to all workers, without distinction whatsoever, including, as in the present case, persons performing community work.

The Committee requests the Government to amend this legislation with a view to guaranteeing the right to organize to the persons concerned, in conformity with the Convention.

2. The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2025 (320th Report, paragraphs 374-414) concerning the Back to School Act, 1998, which brought an end to a legal strike by teachers, without prior consultation with them, and authorized either party to initiate a mediation-arbitration procedure and to request the Minister of Labour at any time to appoint a mediator-arbitrator with the exclusive jurisdiction to determine all matters that he or she considers necessary to conclude a new collective agreement. The Committee recalls that the right to strike is one of the legitimate and essential means through which workers and their organizations, including teachers, can defend their economic and social interests, and that recourse to compulsory arbitration in cases where the parties do not reach agreement through collective bargaining is not in conformity with the principle of voluntary negotiation and is permissible only in the context of essential services in the strict sense of the term.

The Committee urges the Government to take the necessary measures so that teachers in Ontario are authorized to exercise the right to strike, and to avoid in future recourse to the adoption of return to work legislation.

E. Newfoundland

1. The Committee recalls that its previous comments concerned the need to amend section 10.1 of the Public Service (Collective Bargaining) Act (No. 59), which confers broad powers on the employer with regard to the procedure for the designation of "essential employees". The Committee notes that the joint labour and management working group, whose mandate included a review of legislation affecting freedom of association with a view to proposing necessary reforms, has submitted a detailed report which is generally supportive of the provisions of the Act in this respect. The Committee also notes that, in all the cases dealt with by the Labour Relations Board in the early 1990s, workers and employers voluntarily submitted an agreement to the Board on employees to be designated as essential which, according to the Government, demonstrates their endorsement of the provisions in question.

The Committee notes this information with interest and requests the Government to keep it informed in future reports of the application of this legislation in practice.

2. The Committee notes the adoption of a new collective bargaining legislative model in the fishing industry which prohibits strikes or lockouts. The Committee recalls that the right to strike is an intrinsic corollary of the right to organize and may only be limited in the case of public servants exercising authority in the name of the State or in essential services in the strict sense of the term.

The Committee requests the Government to amend the legislation so that these workers are not denied the right to strike.

Central African Republic (ratification: 1960)

The Committee notes with regret that for the second year in succession the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. *Article 3 of the Convention (right of workers' organizations to elect their representatives in full freedom).* The Committee recalls that sections 1 and 2 of Act No. 88.009 of 19 May 1988 on freedom of association and the protection of trade union rights, amending the Labour Code, provide that any person having lost the status of worker cannot either belong to a trade union or take part in its leadership or administration, and that trade union officers must be members of a trade union. The Committee repeats its request that excessive restrictions regarding the requirement that trade union officers must belong to the same occupation should be relaxed in order to ensure that qualified persons, such as those employed by the trade unions or pensioners, may carry out union duties.

2. *Articles 5 and 6 of the Convention (the right of workers' organizations to establish federations and confederations of their own choosing).* The Committee had noted that the new Constitution of 14 January 1995 enshrined the possibility of trade union pluralism and freedom of association (article 10). While noting that, according to the Government, section 30 of Act No. 61.221 introducing the Labour Code provides that trade unions can affiliate to form associations, the Committee recalls that section 4 of Act No. 88.009 of 19 May 1988, amending the Labour Code, still provides that trade unions constituted in federations and confederations may group together in a single central national union. Given that the Government had indicated in its previous reports that legislation would be adopted to implement the constitutional provisions, the Committee once again requests it to communicate the relevant texts as soon as they are adopted repealing the reference to a single central national union contained in Act No. 88.009.

3. *Articles 3 and 10 of the Convention.* Furthermore, the Committee draws the Government's attention to section 11 of Ordinance No. 81.028 of 1984 concerning the Government's power of requisition in the event of a strike, when so required in the "general interest". The Committee considers it necessary to restrict powers of requisition to cases in which the right to strike may be limited or even prohibited, namely in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in a situation of acute national crisis (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 152 and 159).

The Committee requests the Government to keep it informed in its next report of developments in the situation in both law and practice and to indicate the measures taken to amend sections 1, 2 and 4 of the Act of 1988 and section 1 of the Ordinance of 1984 in order to bring them into conformity with the requirements of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Chad (ratification: 1960)

The Committee notes the information contained in the Government's report.

The Committee recalls that its previous comments related to the following points:

1. *Right to establish organizations without previous authorization.* The Committee had requested the Government on several occasions to amend Ordinance No. 27 INT SUR of 28 July 1962 regulating associations, which subjects the establishment of associations to the authorization of the Ministry of the Interior and confers extensive powers on the authorities to oversee the management of associations under penalty of administrative dissolution, which is contrary to *Articles 2, 3 and 4 of the Convention*. The Committee notes with interest that, in its last report, the Government states in this respect that, following the intercession of the Ministry of the Public Service, Labour and Employment Promotion with the Ministry of the Interior, the Ordinance of 1962 no longer applies to trade union organizations. The Government states that all the workers' and employers' organizations in the country recognize its non-application. Moreover, the Minister of Labour has expressed his concern at the failure up to the present to repeal this provision.

2. *Right of organization of minors.* While recalling that all workers have the right to freedom of association, the Committee had noted that under the terms of section 294(4) of the Labour Code, fathers, mothers or guardians may oppose the right to organize of minors under the age of 16 years. The Committee had emphasized that *Article 2* of the Convention guarantees all workers, without distinction whatsoever, the right to establish and join organizations. In its last report, the Government indicates that, due to the slowness of the administration, the texts to be issued under the Labour Code of 1996 have still not appeared. However, it states that this provision should be eliminated when the texts to be issued under the Labour Code are adopted.

3. *Supervision by the authorities of trade union assets.* The Committee had noted that section 307 of the new Labour Code continues to provide that the accounts and supporting documents for the financial transactions of trade unions must be submitted without delay to the labour inspector, when so requested. In this respect, the Government indicates in its report that the texts to be issued under the Labour Code on this point should establish further provisions on the conditions under which such controls may be carried out following a representation or complaint by a member of a trade union.

4. *Right to strike in the public sector.* The Committee had requested the Government to provide information on the application in practice of Decree No. 96 PR MEPT 94 of 29 April 1994 issuing regulations concerning the exercise of the right to strike in the public service. In its last report, the Government states that the above Decree, which gave rise to strong opposition by trade union confederations, has never been applied in practice. Once again, the Government states that the texts which are due to be issued under the Labour Code should explicitly repeal this Decree.

The Committee notes the Government's explanations and hopes that the Government will take the necessary measures in the near future with a view to adopting the texts to be issued under the Labour Code of 1996, repealing Ordinance

No. 27/INT SUR of 1962, repealing or amending Decree No. 96 PR MFPF 94 of 1994, and amending articles 307 and 294 of the Labour Code, in order to bring its legislation into full conformity with the provisions of the Convention. It requests the Government to indicate the measures taken in practice in this respect in its next report.

Colombia (ratification: 1976)

The Committee notes the Government's report and the discussions in the Conference Committee on the Application of Standards in June 2000. The Committee also notes the report of the direct contacts mission which visited the country in February 2000 and the report of the Committee on Freedom of Association on the various cases pending concerning Colombia, which was adopted by the Governing Body at its session in May-June 2000.

In the first place, the Committee notes with deep concern the climate of violence which exists in the country and, in particular, the conclusions of the Committee on Freedom of Association in Case No. 1787 in which it is stated that "the scale of murders, kidnappings, death threats and other violent acts against trade union officials and members is unprecedented in history" (see 322nd Report of the Committee on Freedom of Association, paragraph 24). Furthermore, the Committee notes from the report of the direct contacts mission that "in general the status of trade union leader is a fundamental factor in these assassinations" (see 322nd Report, Annex, paragraph 4 of the conclusions). In this respect, the Committee of Experts considers that the guarantees set out in international labour Conventions, in particular those relating to freedom of association, can only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments are genuinely recognized and protected (see 1994 General Survey on freedom of association and collective bargaining, paragraph 43).

The Committee notes the observations made by the Union of Maritime Transport Industry Workers (UNIMAR) indicating that the merchant marine, the Grandcolombiana Federation of coffee producers and maritime transport do not pay the trade union dues which have been checked off, dismiss trade union leaders and withhold their wages, dismiss workers who attend trade union meetings and block trade union funds, and the Committee requests the Government to make its comments in this respect. The Committee also notes the observations made to the direct contacts mission by the Single Confederation of Workers of Colombia (CUT), the General Confederation of Democratic Workers (CGTD) and the Confederation of Workers of Colombia (CTC) objecting to certain provisions in the Labour Code.

The Committee notes with satisfaction the adoption of Act No. 584 of 13 June 2000 which repeals or amends the following provisions upon which the Committee has been commenting for many years:

section 365(g) of the Labour Code on the requirement, for a trade union to be registered, that the labour inspector must certify that there is no other union (*repealed*);

section 380(3) of the Labour Code, which provides that "any member of a trade union executive who has been responsible for the dissolution of a union as a

sanction may be denied the right of trade union association in any form for up to three years () *(repealed)*;

section 384 of the Labour Code on the requirement that, in order to form a union, two-thirds of its members must be Colombian *(repealed)*;

section 388(1)(a) of the Labour Code on the need to be of Colombian nationality to hold executive office in a trade union *(amended; the new wording provides that "in no case may the executive board be composed in its majority of non-nationals")*;

section 388(1)(c) of the Labour Code on the requirement to have normally exercised the activity, trade or position covered by the trade union in order to be a trade union official and section 388(1)(f) which provides that a person must not have been given a serious sentence, unless he or she has been rehabilitated, nor sued for ordinary offences at the time of election *(amended to leave it to the trade union organization to determine in its rules the requirements, in addition to membership of the trade union, for membership of the executive of a trade union)*;

section 422(1)(c) of the Labour Code on the need to have exercised the activity, occupation or position covered by the trade union in order to hold office in a federation or confederation and section 422(1)(f) which provides that a person must not have been given a serious sentence, unless he or she has been rehabilitated, nor sued for ordinary offences at the time of election *(amended to leave it to the trade union organization to determine in its rules the requirements, in addition to active membership of the trade union, federation or confederation, for holding executive office in a federation or confederation)*;

section 432(2) of the Labour Code on the need to be of Colombian nationality in order to be a member of a delegation submitting the list of claims made to an employer *(amended to remove the requirement of being Colombian)*;

section 444, last subsection, of the Labour Code on the presence of the authorities at general assemblies convened to vote on referral to arbitration or the calling of a strike *(amended to leave it to the trade union organization to determine whether or not the labour authorities should be present)*;

section 448(3) of the Labour Code, which provides that "when a strike is called, the Minister of Labour and Social Security, ex officio or at the request of the trade union or trade unions representing the majority of workers at the enterprise, or if not, of the workers gathered at a general meeting, may (once a strike is called) submit to a ballot by all workers in the enterprise whether they wish to submit the outstanding matters under dispute to arbitration" *(amended to remove the possibility of the Minister of Labour and Social Security being able to submit automatically to a ballot by the workers of the enterprise the question of the submission of the dispute to an arbitration tribunal)*; and

section 486 on the control of the internal management of trade unions and union meetings by officials, which permitted officials of the Ministry of Labour to call before them trade union leaders or members to require them to provide relevant information on their work, and to present books, registers, plans and other documents and obtain copies of or extracts from the latter *(amended; the authorities of the Ministry of Labour and Social Security may exercise these*

powers provided that they have received a request from the trade union and/or the second- and third-level organizations of which the trade union is a member).

However, the Committee notes that the new Act which has been adopted does not refer to other legislative provisions on which the Committee has also been commenting for many years, namely:

the prohibition of federations and confederations from calling strikes (section 417(1) of the Labour Code);

the prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very wide range of services which are not necessarily essential (section 450(1)(a) of the Labour Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967) and the possibility of dismissing trade union officers who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), including when the strike is unlawful due to requirements which are contrary to the principles of freedom of association; and

the power of the Minister of Labour to refer a dispute to arbitration when a strike lasts more than a specific period (section 448(4) of the Labour Code).

In this regard, the Committee notes that during the direct contacts mission carried out in February 2000, draft legislative texts were prepared to amend the above provisions and that the Government undertook to submit the above draft texts to the social partners and subsequently to Congress. In these conditions, the Committee hopes that once these consultations have been held, the draft legislative texts will be submitted rapidly to Congress. The Committee requests the Government to provide information on developments in this process.

Finally, with regard to the observations made by the Colombian Textile Workers Union (SINTRATEXIL) concerning the failure of the Textiles Rio Negro enterprise to comply with the obligation to deduct trade union dues, the Committee notes the Government's statement that there are legal provisions requiring employers to deduct trade union dues and that, in the case in question, the Labour Inspectorate of Rionegro-Antioquia undertook an administrative investigation and penalized the enterprise in decisions Nos. 001, 007 and 800 dated 6 March, 30 March and 9 June 2000.

Congo (ratification: 1978)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation:

The Committee recalls that its previous comments focused largely on the need to amend the legislation on the minimum service "indispensable to safeguard the general interest" to be maintained in the public service, which is organized by the employer, wherein refusal to participate is deemed to constitute serious misconduct (section 248-16 of the Labour Code), in order to limit the minimum service to operations which are strictly necessary to meet the basic needs of the population and within the framework of a negotiated minimum service.

The Committee noted that the Government had undertaken to review this provision in consultation with the social partners with a view to modifying it or adopting an implementing text. It once again asks the Government to keep it informed of any

developments in this matter and to provide a copy of the text amending the provision in the near future.

With regard to the fact that the Labour Code contains no provisions authorizing workers and employers to include in collective agreements a clause on the deduction of trade union dues from the wages of workers with the latter's written consent, the Committee noted that, according to the Government, this question was on the agenda of the National Labour Advisory Commission and that, in cooperation with the social partners, a procedure would be adopted which took account of the requirements of the Convention. The Committee once again asks the Government to keep it informed of any developments in this matter in its future reports.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Costa Rica (ratification: 1960)

The Committee notes the Government's report, resolution No. 346-98 of August 1998, the draft reform of the Labour Code and Legislative Decree No. 832. It also notes the observations made by the *Rerum Novarum* Confederation of Workers (CTRN), the Costa Rican Transport Workers' Union (SICOTRA) and the Ministry of Finance Employees' Union (SINDHAC) with regard to the application of the Convention. It also recalls that its previous comments referred to various discrepancies between national law and practice and the guarantees set out in the Convention, in particular:

article 60(2) of the Constitution and section 345(e) of the Labour Code, under which foreign nationals are prohibited from holding office or exercising authority in trade unions;

sections 375 and 376(c) of the Labour Code, which prohibit the exercise of the right to strike in the rail, maritime and air transport sector;

the inequality of treatment between solidarist associations and trade unions with regard to the management of compensation funds for dismissed workers;

section 14 of the Labour Code, which excludes from the scope of the Code agricultural and stock-raising enterprises which permanently employ no more than five workers; and

the observations made by the Costa Rican Inter-Confederal Committee (CICC) and by the Workers' Union of the Institute for Agricultural Development (UNFIDA) regarding the public authorities' restrictions on trade union organizations with regard to the formulation of their statutes, the election of their representatives, the acquisition of legal personality and their activities, including strikes.

Prohibition upon foreign nationals from holding office or exercising authority in trade unions

The Committee notes the submission by the Minister of Labour and Social Security of a draft amendment to article 60(2) of the Constitution of the country with regard to the prohibition upon foreign nationals from holding office or exercising authority in trade unions. Furthermore, the Committee notes that, in accordance with a Unanimous Affirmative Opinion issued by the Permanent Committee on Legal Matters of the Legislative Assembly respecting the Bill to amend various sections of the Labour Code and Legislative Decree No. 832, section 345(e) of the Labour Code, which prohibits

foreign nationals from holding office or exercising authority in trade unions, should be repealed. The Committee expresses the strong hope that this Bill will be adopted in the very near future and that the repeal of this provision will be reflected in the Constitution (article 60(2)).

*Prohibition upon exercising the right to strike
in the rail, maritime and air transport sector*

The Committee notes that the Government currently prefers to remain silent on this issue while awaiting the publication of the considerations on issues of form and substance on which the Constitutional Chamber based its opinion on 27 February 1998 in declaring unconstitutional subsections (a) and (b) of section 376 (which prohibited the right to strike for public officials and agricultural workers, respectively), while maintaining this prohibition for workers in the rail, maritime and air transport sector (subsection (c)). In view of the time which has since elapsed and the fact that the CTRN, SICOTRA and the SINDHAC are criticizing the failure to comply with the Convention in the transport sector, the Committee expresses the strong hope that in the very near future the Government will take the appropriate measures to give legal recognition to the right to strike of workers in the above sectors. The Committee requests the Government to inform it in its next report of any legislative progress made in this respect and to forward a copy of the legislative text once it has been adopted.

*Inequality of treatment between solidarist associations
and trade unions in relation to the management of
compensation funds for dismissed workers*

The Committee asked the Government to modify its legislation so as to guarantee to the trade unions the faculty to administer the employment compensation in the same way as the solidarist associations in order to eliminate all inequality in this matter. The Committee notes with interest that, according to the Government, this inequality has been removed by means of the Workers' Protection Act of 15 February 2000. This text was prepared jointly by representatives of employers, solidarist associations, cooperatives, trade unions and the Government, so that workers are able to choose in full freedom the authorized body which will administer the funds deposited in their name by their employer. The Committee requests the Government to provide the complete text of the above Act with its next report.

*Exclusion of agricultural workers in small
enterprises from the scope of the Labour Code*

With regard to section 14 of the Labour Code, subsection (c) of which excludes from its scope agricultural or stock-raising enterprises which permanently employ no more than five workers, the Committee notes that, according to the Government, this provision was declared unconstitutional in 1952 by a Decree which provided that "genuine agricultural or stock-raising establishments which employ five or fewer workers shall be governed by the provisions of this Code". The Committee regrets to note that this has not been reflected in the Code. The Committee therefore once again reminds the Government that, in accordance with *Article 2 of the Convention*, all workers, without distinction whatsoever, shall have the right to establish and join

organizations of their own choosing to further and defend their occupational interests. The Committee requests the Government to send it an updated version of the Labour Code which also provides that agricultural workers in small establishments enjoy the guarantees set out in the Code and, in particular, the right to organize.

*Government interference in the trade union activities
of the CICC and of the UNEIDA*

With regard to the observations made by the Costa Rican Inter-Confederal Committee, the Committee notes with interest the Unanimous Affirmative Opinion of the Permanent Committee on Legal Matters of the Legislative Assembly, dated 16 March 1999, respecting the Bill to "reform various sections of the Labour Code and Legislative Decree No. 832", repealing subsection (a) of section 346 of the Labour Code, which establishes the obligation that the assemblies of workers' organizations elect annually the executive committee.

The Committee nevertheless observes that the Bill does not envisage repealing the restrictions on the right to strike set out in subsection (c) of section 373 of the Labour Code, by virtue of which, to call a legal strike, the workers must "constitute at least 60 per cent of the persons who work in the enterprise, workplace or commerce in question". The Committee recalls in this respect that, if a member State deems it appropriate to establish in its legislation provisions for the requirement of a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 170).

The Committee also notes that, by virtue of new section 344 of the above Bill, the Social Organizations Department will merely fulfil the function of registration in relation to the granting of legal personality to trade unions. While welcoming this possible amendment, the Committee notes that in no event should administrative silence give rise to undue delays in the acquisition of legal personality by trade unions, and that the elapse of a reasonable period of time established by law without a response should be interpreted as indicating a positive outcome in this respect.

The Committee takes note of the comments of the Costa Rican Union of Chambers and Association of Private Enterprises (UCCAEP), which praises the action of the constitutional bodies in their efforts to adapt the national laws and practice to the Convention.

The Committee requests the Government to provide information in its next report on the measures which have been adopted or are envisaged to bring the law and practice into conformity with the Convention.

Croatia (ratification: 1991)

The Committee notes the information supplied by the Government in its report.

Referring to its previous comments in which it had requested the Government to amend the Croatian Railways Act of 1994 to ensure that minimum services to be maintained during a strike are limited to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population, the Committee notes with satisfaction that the Act amending the Croatian Railways Act

(*Official Gazette*, No. 162/99) sets out, in its article 16(a), the manner for determining minimum rail services during a strike. Article 16(a) provides that, inter alia, with regard to passenger traffic, the management shall, in consultation with trade unions, specify in annual timetables which trains for transportation of passengers and goods must operate during a strike. If the trade union does not accept the management's decision, it may file a complaint to a special arbitration board.

Article 2 of the Convention. The Committee had noted that article 165 of the new Labour Act provides that a minimum of ten individuals of full age is necessary to establish an employers' association. The Committee notes that the Government indicates that it has initiated a procedure aimed at amending article 165(2) of the Act which would now provide that an employers' association can be established by at least three legal or physical persons. The Committee takes note with interest of this information and requests the Government to send it a copy of the proposed amendment once it has been adopted.

Article 3. The Committee had noted that the Union of Autonomous Trade Unions of Croatia had criticized the Law on Associations, particularly as regards its provisions concerning the property and the transfer of the assets of social organizations. In this respect, the Committee had noted the recommendations of the Committee on Freedom of Association in Case No. 1938 (see 309th Report, paragraph 185, and 310th Report, paragraph 17) in which it requested the Government to determine the criteria for the division of immovable assets formerly owned by the trade unions in consultation with the trade unions concerned should they be unable to reach an agreement among themselves, and fix a clear and reasonable time frame for the completion of the division of the property once the period of negotiation has passed. In its latest report, the Government indicates that it has not proposed to the Parliament the criteria for division for trade union property since the trade unions have informed it that an agreement was reached among trade union confederations for the solution of the problem without the Government's interference. The Committee takes note of this information with interest.

Articles 3 and 10. Finally, the Committee had requested the Government to comment on the observations made by the Union of Autonomous Trade Unions of Croatia and the Croatian Associations of Unions concerning two decisions of the Supreme Court of the Republic of Croatia of 15 May 1996 and 11 July 1996. In these decisions, the Court, referring to article 209 of the Labour Act, declared that strikes for the purpose of protesting against unpaid salaries were unlawful. The Court stated that such strikes did not meet the prerequisites for a strike to be legitimate as regards its purpose. In its latest report, the Government indicates that in the two decisions referred above, the Supreme Court had to consider whether the strike to be carried out was really motivated by the reasons stated in article 210 of the Labour Act and it was for it to determine when an employee's individual labour dispute on non-payment of salaries represented an action to protect economic and social interests of trade union members. Nevertheless, the Government indicates that it has assessed that the provisions of article 210 are not sufficiently clear and has therefore proposed that this article be amended by adding an explicit provision stating that "non-payment of wage or sickness benefit within 30 days of it being due is a legitimate reason for a strike". The Committee takes note with interest of this information and requests the Government to send it a copy of the proposed amendment once it has been adopted.

Cuba (ratification: 1952)

The Committee notes the Government's report. It also notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos. 1628, 1805 and 1961 (see the 305th, 308th and 320th Reports, November 1996, November 1997 and March 2000, respectively).

The Committee recalls that its previous comments referred to: (1) the need to remove from the Labour Code of 1985 the reference to "Confederation of Workers" (sections 15 and 16); and (2) the need to amend Legislative Decree No. 67 of 1983 (section 61), which confers on the above Confederation of Workers the monopoly of representing the country's workers on government bodies.

With regard to the need to delete the reference in the Labour Code to the Confederation of Workers, the Committee notes the Government's indications that this is one of the aspects that is being examined in the framework of the revision of the Labour Code, for which working groups have been established with the participation of representatives of organizations, enterprises and trade unions and the Confederation of Workers of Cuba, which are currently preparing a first draft. In this regard, the Committee regrets that the revision of the Labour Code, which has been announced for several years, has not yet borne fruit. The Committee emphasizes that, in accordance with *Articles 2, 5 and 6 of the Convention*, which establish the right of workers and their organizations to establish organizations of their own choosing, it should be possible to establish federations and confederations and to establish several trade union confederations. In these conditions, the Committee hopes that the necessary amendments will be made to the Labour Code in the near future and requests the Government to provide information in its next report on any measure taken in this respect.

With regard to the need to amend Legislative Decree No. 67 of 1983 (section 61), which confers upon the Confederation of workers of Cuba the monopoly of representing the country's workers on government bodies, the Committee recalls that, by virtue of *Article 3 of the Convention*, workers' organizations shall have the right to organize their activities and formulate their programmes freely. The most representative organizations, whether or not they are trade union confederations, should therefore be in a position to represent their members on government bodies in defence of their occupational interests. The Committee urges the Government to take measures to amend the Legislative Decree in question and to provide information in its next report on any developments in this respect.

Finally, the Committee notes that: (1) in Case No. 1628, the Committee on Freedom of Association deplored the fact that the Union of Cuban Workers (USTC) had not been legally recognized by the authorities and insisted that this organization be registered and allowed to function fully without discrimination; (2) in Case No. 1805, the Committee on Freedom of Association requested the Government to guarantee the freedom of the Confederation of Democratic Workers of Cuba (CTDC) to operate and to ensure that the authorities refrained from any interference aimed at restricting the exercise by that organization of the fundamental rights recognized in Convention No. 87; and (3) in Case No. 1961, the Committee on Freedom of Association noted that the Single Council of Cuban Workers (CUTC), defined as an independent trade union organization, was established more than four-and-a-half years ago, but the Government still refuses to recognize it, and the Committee on Freedom of Association requested the

Government to ensure that the law, effectively applied, allows recognition of organizations of workers such as the CUTC. In this respect, the Committee endorses the recommendations made by the Committee on Freedom of Association in the above cases.

[The Government is asked to report in detail in 2001.]

Cyprus (ratification: 1966)

The Committee notes the information provided in the Government's report.

In its previous comments, the Committee had insisted on the need to amend sections 79A and 79B of the Defence Regulations which grant the Council of Ministers discretionary power to prohibit strikes in the services that they considered essential. The Committee recalled that strikes can only be prohibited in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

The Government indicates in its latest report that the discussions on the right to strike in essential services has been continuing between a ministerial committee and the trade unions and that the two sides have met on several occasions and most recently on 24 May 2000. The Government indicates that following the views expressed within the framework of this dialogue, it has decided to introduce a framework law which would be confined to defining "essential services" and "minimum service" and which would bound the parties in the case of a labour dispute in an essential service to follow for its settlement a procedure which would be defined and agreed upon by the parties.

The Committee takes note of this information but recalls that it has been formulating its observations on the restrictions on the right to strike provided for in the Defence Regulations for more than a decade. The Committee trusts that the necessary steps will be taken in the near future to ensure the total conformity of the legislation with the principles of the Convention, namely that the right to strike may only be prohibited in essential services in the strict sense of the term, for public servants exercising authority in the name of the State or in times of acute national crisis.

The Committee trusts once again that the Government will be able to indicate in its next report that substantial progress has been made in this regard. It requests the Government to provide information on the progress made and to provide the text of the new legislation as soon as it has been adopted.

Denmark (ratification: 1951)

The Committee notes the information provided in the Government's report.

The Committee recalls that it has been commenting since 1989 on the need to amend section 10 of the Act No. 408 of 1988 establishing the Danish International Ships' Register (DIS) which prohibited workers employed on board Danish ships but who are not residents of Denmark from being represented in collective bargaining by Danish trade unions if they so wished, in contravention of *Articles 2, 3 and 10 of the Convention*.

The Committee notes with interest from the Government's report that a two-year agreement was entered into between the social partners in September 1999 confirming

the fundamental principle that Danish labour organizations have a right to be represented at negotiations between Danish shipping companies and foreign trade unions in order to ensure that the results in respect of wages and other working conditions are at an internationally acceptable level. Pursuant to the agreement, a contact committee was established with the purpose of developing and extending cooperation between the parties and, on 25 February 2000, the parties further entered into a framework agreement on the establishment of collective agreements with foreign unions and individual agreements for foreign seafarers from outside the European Union which sets minimum standards to be upheld. According to the Government, the Danish trade unions have agreed to have a "truce" over section 10 of the Danish International Shipping Register Act.

While further noting the Government's view that any position towards the Danish International Shipping Register should await a broad discussion in the ILO of international registers and second registers based on an upcoming study on their impact on the conditions of employment of seafarers, the Committee reaffirms its hope that the Government will take the necessary steps to amend section 10 of Act No. 408 so as to ensure that non-resident seafarers will have the right to be represented by organizations of their own choosing that is to say foreign trade union or Danish trade unions depending on their own will. It requests the Government to indicate in its next report any measures taken or envisaged in this respect.

The Committee is also addressing a request on other points directly to the Government.

Djibouti (ratification: 1978)

The Committee notes the information contained in the Government's reports. It also notes the interim conclusions of the Committee on Freedom of Association in Cases Nos. 1851, 1922 and 2042 (318th Report of the Committee on Freedom of Association, approved by the Governing Body in November 1999), as well as the discussion in the Conference Committee on the Application of Standards in June 2000.

The Committee recalls that its previous comments concerned the divergencies between national law and practice and the guarantees set forth in the Convention, namely:

- the requirement of prior authorization for the establishment of trade unions (section 5 of the Act on associations, as amended in 1977);

- the requirement to be a national of Djibouti in order to hold trade union office (section 6 of the Labour Code);

- the broad powers of the authorities to requisition public servants who are on strike (section 23 of Decree No. 83-099 PR FP of 10 September 1983);

- the failure to reinstate trade union leaders dismissed for strike action;

- the restrictions on the right of workers to elect their trade union representatives freely and democratically in elections in their enterprises and in the ordinary assemblies of trade union confederations.

1. *Article 2 of the Convention. Right to establish organizations without previous authorization.* The Committee notes once again that section 5 of the Act on associations,

as amended in 1977, requires organizations to obtain prior authorization before establishing themselves as trade unions. The Committee has already recalled on several occasions that, under the terms of *Article 2* of the Convention, workers have the right to establish organizations of their own choosing *without previous authorization*. It notes that the Government is prepared to examine amendments to be made to this provision and to submit the necessary amendments as soon as possible to the National Assembly with a view to bringing this text into conformity with the provisions of the Convention. The Committee requests the Government to provide information on the measures taken in this respect in its next report.

2. *Article 3: Right of workers to elect their representatives in full freedom*. The Committee recalls once again that section 6 of the Labour Code, which limits the holding of trade union office to Djibouti nationals, is such as to restrict the full exercise of the right of workers to elect their representatives in full freedom. It notes that, according to the information provided by the Government in its report, this provision will be repealed by the draft Labour Code which is currently being prepared. The Committee expresses the firm hope that measures will be taken as soon as possible to allow foreign workers to have access to trade union office, at least after a reasonable period of residence in the country. It requests the Government to indicate the progress achieved in this respect in its next report and to provide copies of any relevant legislation as soon as it has been adopted.

3. *Requisitioning*. With regard to section 23 of Decree No. 23-099-PR/FP of 10 September 1983, which confers broad powers on the President of the Republic to requisition public servants who are indispensable to the life of the nation and to the proper operation of essential public services, the Committee notes the information provided by the Government in its report to the effect that the power of requisitioning only applies to essential services (health, safety, air traffic). Furthermore, the Committee notes that the Government is prepared, if the Committee considers it necessary, to specify the limits of this power. The Committee once again requests the Government to amend its legislation so as to limit the power of requisitioning to public servants who exercise authority in the name of the State or essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis.

4. *Reinstatement of trade union leaders*. With regard to the reinstatement in their jobs of the trade union leaders of the UGTUDT who were dismissed due to their legitimate trade union activities five years ago, the Committee notes that the Government considers the matter to have been resolved. Certain trade unionists have been reinstated in their jobs since 1997, but the Government states that it cannot reinstate trade unionists in their trade union functions, since that would amount to interference in trade union activities. The Government provides an assurance that it will reinstate any trade unionist who so requests, provided that they do not set prior conditions for their reinstatement. The Committee notes this information and requests the Government to endeavour to obtain the reinstatement in their jobs of all dismissed trade union leaders who so request and to provide information in its next report on the measures taken in this respect.

5. *Right of workers to elect their trade union leaders freely and democratically*. While recalling that its previous comments concerned the need to

guarantee workers the right to elect their trade union representatives freely and democratically in elections in their enterprises and in the ordinary assemblies of trade union confederations, the Committee notes the information provided by the Government in its last report to the effect that it considers this issue to be an internal matter for the trade union movement which must be resolved without any external interference, even by the Government. Furthermore, the Committee notes that the Government calls on international trade unions to come and observe the proper functioning of these trade union elections. The Committee emphasizes the importance of workers being able to elect their representatives in full freedom in enterprises, trade unions, federations and confederations and requests the Government to provide information in its next report on developments in this respect.

The Committee notes that the Government indicates that it will examine the necessary measures in order to put its legislation into conformity with the Convention during its future revision of all legislative texts with the assistance of the ILO, as soon as the conditions will be met to organize national tripartite consultations. Recalling that ILO technical assistance is available, the Committee expresses the firm hope that measures will be taken without delay in order to put the legislation and practice into conformity with the Convention. The Committee requests the Government to provide information in its next report on any progress achieved in these fields in both law and practice and to provide copies of any provisions which have been amended.

Dominica (ratification: 1983)

The Committee takes note of the Government's report.

The Committee recalls that its previous comments referred to the need to amend legislation so that restrictions on the right to strike would only be imposed in the case of essential services, meaning the services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in case of an acute national crisis. The Committee noted that the banana, citrus and coconut industries were included in the schedule of essential services annexed to Act No. 18 of 1986 on industrial relations, making it possible to stop a strike by compulsory arbitration, and that sections 59(1)(b) and 61(1)(c) of this Act empowered the Minister to refer disputes to compulsory arbitration if in his opinion it concerned serious issues.

The Committee further notes that the port authority still appears to be on the list of essential services. In this respect, the Committee draws the Government's attention to paragraph 160 of its 1994 General Survey on freedom of association and collective bargaining wherein it states that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, the authorities could establish a system of minimum service in other services which are of public utility, like the port authority, rather than impose an outright ban on strikes, which would be limited to essential services in the strict sense of the term.

In its previous comments, the Committee noted the Government's indications that the draft bill drawn up with the assistance of the ILO, which envisaged the deletion of the banana, citrus and coconut industries from the schedule of essential services and limited the powers of the competent minister to refer a dispute to compulsory arbitration

to end a strike, was not yet complete. The Committee notes from the Government's latest report that there has been no change in the legislation or practice.

The Committee urges the Government to take the necessary measures in the very near future to bring legislation on industrial relations into full conformity with the principles of freedom of association and requests it to supply information in its next report on all progress in this area.

Dominican Republic (ratification: 1956)

The Committee notes the Government's report and recalls that its previous comments referred to:

- the requirement that federations must obtain a two-thirds majority vote of their members to be able to establish a confederation (section 383 of the Labour Code of 1992);
- the opposition of certain enterprises in export processing zones to the establishment of trade unions and the disregard of trade union rights;
- respect for trade union rights in sugar cane plantations;
- the requirement in the law of a majority of 51 per cent of votes in order to call a strike (section 407(3) of the Labour Code);
- the exclusion from the scope of the Labour Code (Principle III) and of the Civil Service and Administrative Careers Act of employees of autonomous and municipal state institutions (section 2); and
- the requirement of 60 per cent of the total number of employees in the respective institution for public servants to be able to establish organizations (section 142(1) of the Regulations adopted under the Civil Service and Administrative Careers Act).

Establishment of confederations

1. The Committee notes that the Government has provided no information on this question. In its previous observation, the Committee noted with interest the guarantees provided by the Government that it would submit a draft text to the National Congress to enable federations to include in their statutes the necessary provisions to establish confederations and that, for this purpose, it would consult the most representative occupational organizations.

The Committee notes that, in accordance with sections 383 and 388 of the Labour Code which is in force, the agreement of two federations, supported by the votes of two-thirds of their members, is required to establish a confederation. The Committee therefore hopes that in the very near future the requirement for two-thirds of the members of federations to vote for the establishment of a confederation will be removed from the legislation, so that it is left to the statutes of federations to lay down the criteria in this respect.

Establishment of trade unions in export processing zones

2. The Committee regrets that the Government has not provided any information on this question. It recalls that in its previous observation it noted the setting up of a

specialized unit for these types of enterprises and that eight collective agreements and various other agreements had been concluded in this respect.

The Committee urges the Government to provide information on developments which occur in practice in relation to this matter.

Observance of trade union rights in sugar cane plantations

3. The Committee notes that the Government has not provided information on this matter. It recalls that in its last observation it noted that the Government was doing its utmost to ensure the full exercise of these rights.

The Committee therefore once again requests the Government to provide information in its next report on any progress achieved in relation to the questions raised.

Requirement of a majority vote to call a strike

4. The Committee notes the Government's statement that the social partners meeting in a tripartite body sought, although without success, an agreement to facilitate the preparation of a draft text to reduce the legal minimum requirement set out in section 40(1) of the Labour Code.

The Committee observes that the Government should ensure that account is taken only of the votes cast, and that the required quorum is fixed at a reasonable level (see 1994 General Survey on freedom of association and collective bargaining, paragraph 170). The Committee also requests the Government to take new measures and once again hopes that it will be able to provide information in its next report on the progress made in this respect.

Right of organization of employees of autonomous and municipal state institutions

5. The Committee notes that the Government confines itself to reiterating that freedom of association, which is enshrined in the Constitution, is guaranteed and practised in such institutions, as shown by the existence of trade unions in various of the institutions. The Committee recalls that in its previous reply the Government stated that the laws and regulations of these institutions remain silent on the right to establish trade union organizations.

The Committee once again requests the Government to take the necessary measures to ensure that the laws and regulations which are in force in these institutions explicitly allow employees in autonomous state institutions to organize and that it will ensure that the other rights set out in the Convention are guaranteed.

Obstacles to the establishment of trade union organizations of public servants (90 per cent of the total number of employees)

6. The Committee notes that the Government has not achieved any progress in reducing this minimum legal requirement.

The Committee hopes to be able to note in the near future that this percentage has been reduced to a reasonable level and it requests the Government to provide information in its next report on any progress achieved in this respect.

The Committee expresses the strong hope that it will be able to note substantial progress in the application of the Convention in the Government's next report.

Ecuador (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

The Committee recalls that in its previous observation, it noted that two Bills had been drafted in the course of a technical assistance mission of the Office, which took place in September 1997 at the request of the Government. The contents of these Bills and the Government's comments on certain points are as follows:

the amendment of section 59(f) of the Civil Service and Administrative Career Act so that civil servants can establish organizations for the promotion and defence of their occupational and economic interests (on this point, the Government indicates in its report that article 35(9) of the Constitution recognizes the right to organize of civil servants). The Committee observes, however, that article 35(9) provides that "labour relations in the institutions included in subsections (1) (legislative, executive and judicial organs and bodies), (2) (electoral bodies), (3) (organs of control and regulation), and (4) (entities that are part of an autonomous regime) of article 118, and with respect to legal persons created to exercise public authority, along with civil servants, are covered by the laws governing public administration";

the repeal of section 60(g) of the same Act which prohibits civil servants from striking or supporting or participating in strikes, and from establishing trade unions, and the adoption of a provision according to which strikes are prohibited only for civil servants who exercise authority in the name of the State (officials in ministries, the judicial authorities and the armed forces) or for those who are carrying out essential services within the strict meaning of the term (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population);

an addition to section 452 of the Labour Code to the effect that in the event of refusal of registration, the occupational trade union in question may appeal to the competent judicial authorities for the merits of the case to be examined as well as the reasons for the measure being taken;

the amendment of section 454(11) to provide that higher-level organizations enjoy the right to express their opinions on the Government's economic and social policies in a peaceful manner but shall not intervene in purely party, political or religious activities unconnected with their function of promoting and defending the interests of their members, nor shall they oblige their members to intervene in them;

adding to the end of section 466(2) a provision to the effect that in the event of refusal of registration, the works committee in question shall be able to appeal to the competent judicial authorities for the purpose of having the merits of the question examined along with the reasons for the measure;

the deletion from section 466 of paragraph (4) concerning the requirement to be Ecuadorean in order to serve as a trade union official. The Government in its report indicates that this section of the Labour Code would become inoperable were a non-Ecuadorean worker to request to be recognized as a trade union leader, pleading the application of Convention No. 87 or requesting a competent judge to declare the provision of the Labour Code to be unconstitutional. The Committee observes, however, that article 13 of the Constitution states that "foreigners are entitled to the same rights as Ecuadoreans, unless otherwise provided in the Constitution and the

law". The Committee considers that the Constitution, as presently worded, does not clearly guarantee to Ecuadorians the right to hold trade union leadership posts.

the amendment of section 472 on the dissolution by administrative measures of a works committee in order to grant to the workers' or employers' organizations concerned or the Ministry of Labour the right to appeal to the judicial authorities in order to request dissolution of the committee. The Government indicates that for the last 15 years, no such dissolution has taken place in practice;

the amendment of section 522(2) concerning minimum services in the event of a strike providing that in the absence of agreement, the measures for the provision of minimum services will be laid down by the Ministry of Labour through the General Labour Directorate or the relevant subdirectorates in consultation with the workers' and employers' organizations in the sector; and

the repeal of Decree No. 105 of 7 June 1967 on unlawful work stoppages and strikes for which prison sentences can be imposed on the instigators of collective work stoppages and on those taking part in them.

In addition, the Committee recalls that for many years it has been referring to the following matters:

the need to reduce the minimum number of workers (30) needed to be able to establish associations, works committees or assemblies in order to organize works committees (sections 450, 466 and 459 of the Labour Code). Although the minimum number of 30 workers would be admissible for industrial trade unions, the Committee considers that the minimum number should be reduced to facilitate the establishment of enterprise unions and not to hinder their establishment, particularly in view of the very large proportion of small enterprises in the country;

the deprivation of the guarantee of security to workers who take part in a solidarity strike (section 516 of the Labour Code). The Government insists on the fact that it is trying to prevent the abusive use of solidarity strikes that would result in long periods of immobility;

the implicit refusal of the right to strike for federations and confederations (section 505 of the Labour Code);

the need for civilian workers in bodies associated with or dependent on the armed forces, particularly workers in the maritime transport sector of Ecuador, to enjoy the right to join trade unions of their choice, and for the Union of Ecuadorian Shipping Transport Workers (TRASNAVE) to be registered with the utmost dispatch (Case No. 1664 of the Committee on Freedom of Association). The Government indicates that the relationship between the different constitutional provisions would require the revision of the trade union's request for registration.

The Committee observes that there continues to be a large number of provisions that should be modified in order to bring the legislation and the practice into conformity with the Convention. The Committee requests the Government to take the measures necessary without delay to bring the legislation and the practice into conformity with the Convention. The Committee reminds the Government that the Office is available to provide technical assistance, and expresses the firm hope that the Government will supply information in its next report concerning all progress achieved with respect to the questions raised.

The Committee notes that certain new provisions of the 1998 Constitution give rise to, or could give rise to, problems with respect to the application of the Convention:

Article 35(9) which provides that "the right of association is guaranteed to all workers and employers and the right to organize their programmes without previous authorization and in conformity with the law". As concerns labour relations for those in

State institutions, the workers will be represented by one organization". The Committee recalls that imposing a trade union monopoly within state institutions or bodies is not compatible with the requirements of the Convention. In this regard, the Committee requests the Government to indicate if article 35(9) of the Constitution implies that only one organization or many can be established per public body or institution; if many can be established, whether preferential rights are granted to the most representative organization, and in the case of an organization becoming the most representative, whether it can exercise these rights in the place of the organization that no longer has the majority.

Article 35(10), first paragraph, which recognizes and guarantees the right to strike and the right to lockout to workers and employers pursuant to the legislation and second paragraph, which states that "it is prohibited to interrupt, for whatever reason, public services in particular those concerning health, education, justice and social security, electrical energy, drinking-water and sewers, transformation, transport and distribution of fuel, public transport and telecommunications. The law will provide appropriate sanctions". The Government states that the first part of paragraph (10) recognizes and guarantees the right to strike and that the concept of "interruption" under the Constitution is interpreted as an action which results in the interruption or cessation, far removed from what the law generally stipulates. In this context, the Committee is of the opinion that the principle whereby the right to strike may be limited or prohibited in the public service or in essential services, whether public, semi-public or private, would become meaningless if the legislation defined the public service or essential services too broadly. As the Committee has already mentioned in previous General Surveys, the prohibition should be confined to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee considers that the interruption of strikes in the public sector is too extensive and that in particular education and general transport services (of persons and products) cannot be considered to be essential services in the strict sense of the term. In these circumstances, the Committee requests the Government to take measures to amend the constitutional provisions noted in conformity with freedom of association principles and to specify the measures envisaged or taken to grant compensatory guarantees to workers deprived of the right to strike.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Egypt (ratification: 1957)

The Committee notes that the Government's report contains no reply to its previous comments. It also notes that the Egyptian Trade Union Federation and the Federation of Egyptian Industries have taken note of the Government's report and did not make any comment. The Committee hopes that the next report of the Government will include full information on the discrepancies between national legislation and the guarantees provided for in the Convention.

1. *Article 2 of the Convention.* In its previous comments, the Committee requested the Government to ensure that sections 7, 13 and 52 of Act No. 35 of 1976, as well as sections 14, 16, 17 and 41 of Act No. 12 of 1995, were amended so that all workers would have the right to establish, should they so wish, occupational organizations outside the existing trade union structure. Furthermore, the Committee recalled the importance of the right of workers to establish organizations of their own choosing

which is violated where a trade union monopoly is maintained by law; even if workers have the right to join or withdraw from those organizations set out in the law, they are still denied the right to form and join organizations outside the existing trade union structure. With respect to a reference made by the Government in an earlier report that the General Confederation of Trade Unions is entitled to establish union organizations, the Committee recalled the primary importance it attaches to the right of workers to form and join organizations under *Article 2*. In addition, the preference of the trade union movement for a unified system is not sufficient to justify a legal monopoly. The Committee reiterated that, where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish (see General Survey on freedom of association and collective bargaining, 1994, paragraph 96). Therefore, the Committee once again urges the Government to ensure that sections 7, 13 and 52 of Act No. 35 of 1976, as well as sections 14, 16, 17 and 41 of Act No. 12 of 1995, are amended so that all workers will have the right, should they so wish, to establish occupational organizations outside the existing trade union structure, in conformity with *Article 2*.

2. *Article 3* With reference to Act No. 12 of 1995, in its previous comments the Committee drew attention to the need to amend the following: (i) sections 41 and 42 to remove the power of the Confederation of Egyptian Trade Unions to exercise control over the nomination and election procedures for trade union office; (ii) sections 62 and 65 so that workers' organizations have the right to organize their administration, including their financial activities, without interference from the public authorities. The Committee recalls that the procedures for nomination and election to trade union office should be fixed by the rules of the organization and not by law or by the single trade union central organization with the support of the law. The Committee, therefore, again requests the Government to take steps to ensure that sections 41 and 42 of Act No. 12 of 1995 are amended.

Concerning section 65, the Government confirmed in an earlier report that the process of financial control rests with the Confederation, while asserting that this was an improvement over the former provision which placed financial control in the hands of the Ministry of Manpower and Training. The Committee considers that allowing the single central organization expressly designated by law to exercise financial control is contrary to *Article 3*. The Committee again requests the Government to take appropriate steps to ensure that section 62, which obliges lower level unions to allocate a certain percentage of their income to higher level organizations, and section 65 of Act No. 12 of 1995, are amended so that workers' organizations have the right to organize their administration, including their financial activities, in accordance with *Article 3*.

3. *Articles 3 and 10* In its previous comments the Committee raised concerns with respect to the following provisions:

- (i) sections 93-106 of the Labour Code, as amended by Act No. 137 of 1981, providing for compulsory arbitration at the request of one party beyond services that are essential in the strict sense of the term;
- (ii) section 70(b) of Act No. 35 of 1976 authorizing the Public Prosecutor to ask the criminal courts to remove from office the executive committee of a trade union that has provoked work stoppages or absenteeism in a public service;

- (iii) section 14(i) of Act No. 12 of 1995 requiring the General Union to approve the organization of strike action.

The Committee noted with interest that the Government had referred, in an earlier report, to a new draft Labour Code which introduces a system of mediation in the case of labour disputes, which can continue to arbitration at the request of both parties. A new tripartite arbitration body was also created. The Committee requests once again the Government to supply a copy of the provisions of the new draft Labour Code amending or repealing sections 93-106 of the Labour Code.

Concerning section 70(b) of Act No. 35 of 1976, the Government indicated in an earlier report that the provision is in conformity with the Convention since it is limited to undertakings providing general services or public facilities or a given facility that responds to public needs. The Committee recalls that it has always considered that any restrictions or limitations on the right to strike should not go beyond public servants exercising authority in the name of the State, or essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, *op. cit.*, paragraphs 158 and 159), and requests the Government to take measures to ensure that section 70(b) is amended accordingly.

Finally, concerning section 14(i) of Act No. 12 of 1995, the Committee had noted that the legislation states that the General Union is to "approve" the organization of strike action by workers, and requiring such approval, even if regulatory in nature, is not in conformity with the Convention, as it denies first-level organizations the right to strike without seeking the authorization of the General Union. The Committee once again requests the Government to amend the legislation in order to bring it into closer conformity with the principles of freedom of association so that first-level organizations have the right to strike without having to seek the authorization of the General Union.

The Committee is also addressing a request directly to the Government.

Estonia (ratification: 1994)

The Committee notes the information supplied by the Government in its report. It also notes the conclusions of the Committee on Freedom of Association in Case No. 2011 (321st Report, paragraphs 188-219, and 322nd Report, paragraphs 11-14, approved by the Governing Body, in June and November 2000, respectively). It also notes the report of the direct contacts mission to Estonia which took place in August 1999. The Committee, like the Committee on Freedom of Association, notes with satisfaction that the Central Association of Estonian Trade Unions (EAKL), the complainant in Case No. 2011, has obtained its registration without having to amend its statutes.

The Committee notes, furthermore, with satisfaction that several discrepancies between domestic legislation, contained in the Non-Profit Associations Act, 1996, and the Trade Union Act, 1989, and the Convention have been repealed or amended. In fact, the new Trade Union Act which was adopted on 16 June 2000 and entered into force on 23 July 2000 does not repeat the provisions of the Trade Union Act of 1989 (which mentions the Central Trade Union of Estonia by name) and guarantees workers the possibility of trade union pluralism. It provides that trade unions are independent and voluntary associations of workers. Under the new Act, obstacles to the constitution and

functioning of trade unions have been abrogated or amended. This applies particularly to provisions which imposed a long, cumbersome and detailed procedure to obtain legal personality (abolition of notarized documents with payment of notary's fees for constitution of a trade union and abolition of taxes for obtaining legal personality) and provisions which conferred on the authorities the power to interfere in the formulation of trade union statutes and in elections of union leaders and the management of organizations. The new Act also specifies that several provisions of the law on non-profit associations apply, unless the union statutes provide otherwise. The Government indicates in its report that the right of employers to establish organizations is still governed by the Non-Profit Associations Act.

In regard to seafarers' right to strike, the Committee takes due note of the information supplied by the Government in its report to the effect that section 21(2) of the collective labour dispute resolution Act does not prohibit seafarers from striking. The Government states that when they are docked, they have the right to strike. The Committee requests the Government to send it a copy of the draft Maritime Service Act governing labour relations of seafarers mentioned in its report.

In regard to minimum service in the event of a strike (section 21(4) of the Act on the resolution of collective disputes), the Government states that a list of these services will be submitted to the Cabinet of Ministers in 2001. The Committee recalls that a minimum service must be limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of service, while maintaining the effectiveness of the pressure brought to bear by a strike. In addition, workers' organizations should be able to participate in defining minimum services, along with employers and the public authorities (see 1994 General Survey on freedom of association and collective bargaining, paragraphs 161 and 162). The Committee requests the Government to supply a list of these services once it has been adopted to enable it to examine compatibility with the principles of freedom of association.

Ethiopia (ratification: 1963)

The Committee takes note of the Government's report as well as the statement of the Government's representative to the Conference Committee on the Application of Standards in 2000 and the discussion that followed.

The Committee recalls its serious concern with regard to the trade union situation and in particular in relation to the government interference in trade union activities.

The Committee also expresses its concern regarding the conviction after three years of preventive detention of the president of the Ethiopian Teachers' Association, Dr. Taye Woldemiate, on charges of conspiracy against the State and sentenced to a prison term of 15 years. In this regard, the Committee recalls that the authorities must ensure observance of the right of all detained or accused persons, including trade unionists, to be tried promptly through normal judicial procedures, which includes in particular: the right to be informed of the charges brought against them, the right to have adequate time for the preparation of their defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority in all cases, including cases in which trade unionists are charged with criminal offences, whether of a political nature or not, which in the

Government's view have no relation to their trade union functions (see General Survey on freedom of association and collective bargaining, 1994, paragraph 32).

The Committee further recalls that its previous comments concerned the following.

Article 2 of the Convention. Right of workers without distinction whatsoever to join an organization of their own choosing. Trade union monopoly at the enterprise level. The Committee had noted that only one trade union may be established in an undertaking where the number of workers is 20 or more, in accordance with section 114 of Labour Proclamation No. 42-1993. The Committee notes that the Government states that it would hold tripartite discussions to determine the appropriateness of amending the labour law on this question. The Committee considers that legislation which provides that only one trade union may be established for a given category of workers runs counter to the provisions of the Convention. It therefore urges once again the Government to take the necessary measures in order to guarantee that trade union diversity remains possible in all cases.

Articles 2 and 10. Restrictions on the right to unionize of teachers and civil servants. The Committee had noted that section 3(2)(b) of Labour Proclamation No. 42-1993 excludes teachers from its scope of application and had requested the Government to indicate how teachers' associations could promote their occupational interests. In this regard, the Government states that following the adoption of the 1994 Constitution, teachers and other government employees had been guaranteed the right to form trade unions in order to bargain collectively with employers or other organizations affecting their interests. In accordance with the relevant constitutional provisions, the Ministry of Labour and Social Affairs and the Civil Service Commission have been preparing draft procedures and regulations on the formation of trade unions and collective bargaining to be included in the draft civil service law. During the preparation of the draft law, the concerned government employees would continue to enjoy their rights of freedom of association and collective bargaining provided for under the Civil Code. While taking note of this information, the Committee requests the Government once again to forward it any draft legislation governing teachers' associations and other government employees. Furthermore, having also noted that state administration officials, judges and prosecutors are also excluded from Proclamation No. 42-1993, the Committee requests the Government to indicate whether these categories of workers are entitled to associate to further and defend their occupational interests and if they will be covered by the proposed draft legislation mentioned above.

Article 4. Administrative dissolution of trade unions. The Committee had noted with concern that the Ministry of Labour cancelled the registration of the former Confederation of Ethiopian Trade Unions (CETU) pursuant to the powers vested in it under section 120 of the Labour Proclamation. In this regard, the Government states that the Ministry of Labour and Social Affairs has submitted a draft legislation to the Council of Ministers which would vest the power of cancellation solely in the Ethiopian courts. The Committee requests the Government to forward it any draft legislation or amendments which would ensure that an organization cannot be liable to be dissolved or suspended by administrative authority.

Articles 3 and 10. Right of workers' organizations to organize their programme of action without interference by the public authorities. The Committee had noted that the Labour Proclamation contains broad restrictions on the right to strike, namely: the

definition of essential services contained in section 136(2) is too broad and should in particular not include air transport and railway services, urban and inter-urban bus services and filling stations and bank and postal services (sections 136(2)(a), (d), (f) and (h)). In addition, sections 141(1), 142(3), 151(1), 152(1), 160(1) and (2) allow labour disputes to be reported to the Ministry for conciliation and binding arbitration by either of the disputing parties. While noting the Government's statement according to which the issue of limiting the definition of essential services was being discussed in the Ministry and that the Labour Relations Board functions as an independent tripartite body, the Committee requests the Government once again to amend its legislation so that the ban on strikes is limited to essential services in the strict sense of the term and so that disputes may be submitted to the Labour Relations Board for binding arbitration only if both parties agree, or in relation to essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population or in case of an acute national crisis.

The Committee urges once again the Government to communicate in its next report the measures taken to amend its legislation and practice in order to comply with the requirements of the Convention.

[The Government is asked to report in detail in 2001.]

Finland (ratification: 1950)

The Committee notes the information provided in the Government's report, including the summary of the comments made by the Central Organization of Finnish Trade Unions (SAK), the Confederation of Finnish Industry and Employers (TT), the Employers' Confederation of Service Industries in Finland (Palvelutyönantajat) and the Finnish Confederation of Salaried Employees (STTK).

The Committee notes with satisfaction from the comments made by the TT and the Palvelutyönantajat that the last remaining requirements for Finnish citizenship were removed from sectoral agreements concerning the eligibility for the position of shop steward in the negotiations on collective agreements in spring 2000. The SAK reports that the citizenship restriction, which remained in force during the previous report period, has now been removed from the shop steward agreement for the hotel and catering industry. The Committee further notes with interest that the citizenship restriction for shop stewards has also been removed from the 1997 general agreement between the SAK and the TT and has been removed from the 1995 central shop steward agreement between the SAK and the Palvelutyönantajat. None of the other agreements mentioned in the report contain any limitations on the citizenship of shop stewards.

Germany (ratification: 1957)

The Committee notes the information provided in the Government's report.

Articles 3 and 10 of the Convention. Right of public service organizations to formulate their programmes in defence of the occupational interests of their members including by recourse to collective action and strike. With respect to the denial of the right to strike of civil servants ("Beamté"), which the Committee has previously commented upon, the Committee notes that the Government in its report reiterates that civil servants, irrespective of their functions, do not enjoy the right to strike. The

Government points out that the ban on strikes for civil servants ("*Beante*") must not be assessed in terms of whether the individual civil servant is also entrusted with sovereign tasks. The status of civil servant ("*Beante*") is the sole criterion for assessing the rights and obligations of a civil servant. Therefore, in view of the tendency to privatize public functions, consideration could be given in the future to transferring these functions to workers or employees who do not have the status of civil servant. As a result, those functions would be carried out by workers and white-collar employees who do have the right to strike. The growing tendency to delegate functions that do not belong to the State's sovereign field of activity to public service employees can also lead to a decrease in the proportion of civil servants. However, the Government concludes that this does not affect the legal status of civil servants in employment at the present time, since they have obtained that status voluntarily and, according to civil service law, they cannot be forced to relinquish that status.

While noting the Government's explanation, the Committee recalls, however, that since 1959 it has been expressing the opinion that the prohibition of strikes by public servants other than public officials exercising authority in the name of the State may constitute a considerable restriction of the potential activities of trade unions and that this restriction may run counter to *Article 8, paragraph 2*, of the Convention (see General Survey on freedom of association and collective bargaining, 1994, paragraph 147). The Committee must insist on the importance of taking the necessary measures so as not to sanction public servants ("*Beante*") who are not exercising authority in the name of the State (postal service employees, railway employees, teachers or others) for taking collective action, which includes recourse to strike, if they so wish. The Committee requests the Government to indicate any measures taken in this respect in its next report.

Ghana (ratification: 1965)

The Committee notes that the Government's report contains no reply to its previous comments and that the Government merely reiterates in its latest report that tripartite consultations are in progress to codify labour laws to ensure their compatibility with the Convention. The Committee expresses, once again, the hope that the next report will include full information on the matters raised in its previous observation which concerned the following.

Articles 2 and 3 of the Convention. Right of workers and employers to establish and join organizations of their own choosing without previous authorization and for these organizations to organize their administration and activities and formulate their programmes. The Committee's previous comments concerned the need to modify sections 11(3) and 12(1) of the Trade Union Ordinance of 1941, and section 3(4) of the Industrial Relations Act No. 299 of 1965, which, respectively, impose a single trade union system and grant the Registrar extensive powers regarding the registration of trade unions and the approval of negotiators. The Committee had noted the recommendations of the National Advisory Committee on Labour (NACL) to amend the sections in question.

The Committee had also noted that the Emergency Powers Act, 1994 (Act No. 472) allows prohibition in particular of public meetings and processions in areas which had been under a state of emergency. In this connection, the Committee recalled

that recourse to a state of emergency may not be made to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity (acts of God, serious disruption of civil order, etc.) and on condition that any measures affecting the application of the Convention are limited in scope and duration to what is strictly necessary to deal with the situation in question (see General Survey on freedom of association and collective bargaining, 1994, paragraph 41). The Committee firmly hopes that measures will be taken at an early date to bring the legislation into conformity with the Convention and requests the Government to indicate in its next report the measures effectively taken in this connection.

The Committee had also noted that the procedure for resolving disputes as defined by the Act of 1965 provides under its section 18 for compulsory arbitration by the minister if one of the parties to the dispute thinks fit. In this regard, the Committee considers that compulsory arbitration to end a collective labour dispute is acceptable either when called for by both parties to the dispute, or in cases where the strike may be limited, or even prohibited, that is in cases of conflict concerning public servants exercising authority in the name of the State or in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population or in the case of acute national crisis. The Committee therefore requests once again the Government to amend its legislation regarding the resolution of disputes so as to restrict the minister's authority to refer a dispute to compulsory arbitration to the cases listed above, and to transmit to it statistics on the number of strikes declared illegal, as well as the grounds for their illegality.

Finally, the Committee had noted that under section 22 of the Industrial Relations Act of 1965, a person declaring, instigating or inciting others to take part in a strike considered to be illegal is liable to a fine or of one year's imprisonment, or both. The Committee recalled in this regard that penal sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Any sanction applied as a result of activities arising from illegal strikes should be in proportion to the offence committed, and the authorities should not impose measures of imprisonment on those organizing or taking part in a peaceful strike (see General Survey, *op. cit.*, paragraph 177). In an earlier report, the Government had indicated that, even though records available indicate that all strikes in Ghana have been illegal because of non-compliance with the dispute settlement procedure laid down in the Industrial Relations Act, 1965, no worker had been prosecuted on the grounds that he had embarked on strike action or incited others to strike. Noting once again the absence of comments by the Government in its latest report on this question, the Committee reiterates its request to the Government to take the necessary measures to bring its legislation into conformity with national practice and amend it accordingly and to keep it informed of all developments in this regard.

Greece (ratification: 1962)

The Committee notes the information supplied by the Government in its report.

Article 2 of the Convention. The Committee recalls that for many years its comments have related to the exclusion of seafarers' organizations from the scope of Act No. 1264, 1982, on trade unions. In its previous report, the Government stated that, in addition to the provisions of articles 12 and 23 of the Greek Constitution, seafarers'

freedom of association is governed by a special legal regime which provides protection for members of the administration of maritime organizations, the right to strike, the decision-taking procedure for proclaiming a strike, obligations during the strike for the safety of the vessel and the protection of vital needs of the community. In addition, the Government states that there are 14 seafarers' organizations, according to maritime specialities (masters, engineers, sailors, electricians, cooks, etc.). These organizations are grouped together in the Pan Hellenic Federation of Seafarers which is a member of the Greek General Confederation of Labour.

The Committee takes due note of this information and requests the Government to submit with its next report all the texts and legislative provisions, with the exception of the Constitution, which govern trade union rights – the right to strike and the right of collective negotiation of seamen's conditions of employment – so that it can ensure their conformity with the principles of freedom of association guaranteed by the Convention.

Guatemala (ratification: 1952)

The Committee regrets to note that the Government's report has not been received. Nevertheless, the Committee notes the discussions held in the Conference Committee on the Application of Standards in June 2000, as well as a previous report received from the Government in May 2000.

In the first place, the Committee notes with concern the conclusions of the Committee on Freedom of Association in Case No. 1970 in which it noted with deep concern the large number of acts of violence against trade union officials and members which have been alleged, including numerous murders and death threats (see the 32nd Report of the Committee on Freedom of Association, paragraph 284(a)). In this respect, the Committee shares the opinion expressed by the Committee on Freedom of Association that freedom of association can only be exercised in conditions in which fundamental human rights, and particularly those relating to human life and personal safety are fully respected and guaranteed (see *ibid.*).

The Committee recalls that for many years it has been criticizing the following provisions of the legislation:

the strict supervision of trade union activities by the Government (section 211(a) and (b) of the Labour Code);

the requirement of being Guatemalan to establish a provisional trade union executive committee or to be elected as a trade union officer; to be an active worker at the time of election; and that at least three members of the executive committee are able to read and write (sections 220(d) and 223(b));

the requirement for the members of the provisional trade union executive committee to make a sworn statement that they have no criminal record and that they are active workers in the enterprise (section 220(d));

the obligation to obtain a two-thirds majority of the workers of the enterprise or workplace (section 241(c)) and of the members of a trade union (section 222(f) and (m)) to be able to call a strike;

the prohibition of a strike or suspension of work by agricultural workers during harvests, with a few exceptions (sections 243(a) and 249), and by workers of

enterprises or services whose interruption would, in the opinion of the Government, seriously affect the national economy (sections 243(d) and 249);

the possibility of calling on the national police to ensure continuity of work in the event of an unlawful strike (section 255) and the detention and trial of persons who try to publicly call an illegal strike or suspension of work (section 257);

the imposition of a prison sentence ranging from one to five years for persons who carry out acts intended to paralyse or disrupt the functioning of enterprises which contribute to the economic development of the country with a view to jeopardizing national production (section 190(2) of the Penal Code);

the imposition of compulsory arbitration without the possibility of having recourse to strike action in public services which are not essential in the strict sense of the term, in particular public transport and services related to the supply of fuel, and the prohibition of inter-union sympathy strikes (section 4(d), (e) and (g) of Decree No. 71-86, amended by Legislative Decree No. 35-96 of 27 May 1996).

The Committee notes with interest that the President of the Republic has transmitted for adoption to Congress a Bill to amend or repeal some of the above provisions:

the strict supervision of trade union activities by the Government (section 211(a) and (b) of the Labour Code);

the requirement that at least three members of the executive committee of a trade union be able to read and write (sections 222(d) and 223(b) of the Labour Code);

the requirement for the members of the provisional trade union executive committee to make a sworn statement that they have no criminal record (section 220(d) of the Labour Code);

the obligation to obtain a two-thirds majority of the workers of the enterprise or workplace (section 241(c) of the Labour Code) and of the members of a trade union (section 222(f) and (m) of the Labour Code) to be able to call a strike;

the prohibition of a strike or suspension of work by agricultural workers during harvests, with a few exceptions (sections 243(a) and 249 of the Labour Code); and by workers of enterprises or services whose interruption would, in the opinion of the Government, seriously affect the national economy (sections 243(d) and 249 of the Labour Code) (nevertheless, the Bill continues to prohibit strikes in other services which are not essential in the strict sense of the term, such as various types of transport and the fuel sector);

the possibility of calling in the national police to ensure the continuity of work in the event of an unlawful strike (section 255 of the Labour Code), even where there is no breach of the peace.

The Committee expresses once again the firm hope that in the very near future legislation will be adopted which has been the subject of tripartite consultations and which includes amendments to all the provisions criticized. The Committee requests the Government to provide information in its next report on any developments in this respect. The Committee reminds the Government that the Office's technical assistance is at its disposal.

Guinea (ratification: 1959)

The Committee notes the information provided by the Government in its report. It recalls that its previous comments concerned the following points.

Articles 3 and 10 of the Convention. The Committee had previously observed that, while public transport and communications do not in themselves constitute essential services in the strict sense of the term, they appear on the list contained in Order No. 5680 M/ASE-DNTLS-95 of 24 October 1995 which defines and determines essential services in the context of the exercise of the right to strike. In this regard, the Committee requested the Government to indicate, in cases where the parties do not manage to reach an agreement on the negotiated minimum service, the measures envisaged for a joint independent body to examine rapidly and without formalities the difficulties raised in the determination of the minimum service.

In addition, the Committee recalled that arbitration at the request of one of the parties, in this case the employer (sections 342, 350 and 351 of the Labour Code), was likely to restrict the exercise of the right to strike, contrary to Article 3 of the Convention. In this regard, the Committee requested the Government to take measures in order to ensure that arbitration could not be imposed at the request of only one of the parties to a dispute. Finally, the Committee requested the Government to continue to provide information on the application in practice of the above sections of the Labour Code and of Order No. 5680 M/ASE-DNTLS-95 of 24 October 1995.

The Committee notes that, according to the information contained in the Government's report, the Order of 24 October 1995 was discussed and adopted by the Advisory Commission on Labour and Labour Legislation, which is a tripartite structure. While in legal terms arbitration at the request of one of the parties, in this case the employer, may restrict the exercise of the right to strike, the Government emphasises that in practice such arbitration has never extended beyond the scope of labour inspections. Finally, the Government states that it will take the Committee's comments into account in the revision of the Labour Code.

The Committee notes this information. With regard to the determination of essential services in the context of the right to strike in public transport and communications, the Committee once again requests the Government to indicate, in cases where the parties do not reach an agreement on a negotiated minimum level of service, the measures which have been taken or are envisaged for a joint independent body to examine rapidly and without formalities the difficulties raised by the definition of such a minimum service (see General Survey on freedom of association and collective bargaining, 1994, paragraph 161). With regard to recourse to arbitration imposed by one of the parties to the conflict, the Committee once again requests the Government to continue to provide it with information on the application in practice of sections 342, 350 and 351 of the Labour Code and requests it to keep it informed of any measures which are taken or envisaged concerning the amendment of the Labour Code on this matter, with a view to ensuring that recourse to arbitration can be imposed by one of the parties to a conflict, in both law and practice, only in cases in which the right to strike may be limited or even prohibited, that is in essential services in the strict sense of the term, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, *op. cit.*, paragraph 159), or in the event of an acute national crisis.

Ghana (ratification: 1967)

The Committee takes note of the information provided by the Government in its latest report.

In its previous comments, the Committee had recalled the necessity to amend the Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01), sections 3, 12 and 19, so that compulsory arbitration in respect of a strike, liable to a fine or two months' imprisonment, may only be used for essential services in the strict sense of the term. The Committee notes that the Government has stated in its report that the industrial disputes subcommittee, which is chaired by a representative of the unions, has not submitted its report on the amendment of the legislation in question, and that the Government will have to take the initiative to draft the amendment to the Act to bring it in line with the Convention. Once again, the Committee urges the Government to take the necessary measures to bring in the near future the legislation into conformity with the Convention and to ensure that the powers conferred on the authorities to resort to compulsory arbitration to bring an end to a strike are limited to collective actions and strikes or services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee urges the Government to indicate in its next report any progress made in this respect.

Haiti (ratification: 1979)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

The Committee had noted the Government's intention to bring its legislation into conformity with the Convention with ILO technical assistance.

The Committee recalls that, for many years, its comments have referred to the need to repeal or amend section 710bis of the Penal Code, which requires that government approval be obtained to establish an association of more than 20 persons, section 34 of the Decree of 4 November 1963, which confers wide powers on the Government to suppress trade unions, and sections 185, 190, 199, 200 and 206 of the Labour Code, which impose compulsory arbitration at the request of one party to end a strike thus imposing excessive restrictions on the right to strike;

to give legal recognition to the right to organize of public servants, in order to bring its legislation into conformity with section 35(3) and (4) of the 1987 Constitution, which provides constitutional guarantees of the freedom of workers in the public and private sectors and recognizes their right to strike, while no specific legislation has been adopted in this respect.

The Committee firmly hopes that the Government, understanding the need to amend these provisions, will take the necessary measures in the near future.

Honduras (ratification: 1956)

The Committee notes the Government's report.

The Committee recalls that for many years it has been commenting on the following provisions of the Labour Code:

the exclusion from the scope of the Labour Code, and thus from the rights and guarantees of the Convention, of workers in certain agricultural or stock-raising enterprises (section 2(1));

the prohibition of more than one trade union in a single enterprise, institution or establishment (section 472);

the requirement of more than 30 workers to constitute a trade union (section 475);

the requirement that trade union organizations must include more than 90 per cent Honduran membership (sections 475 and 504);

the requirement that the officers of a trade union, federation or confederation must be Honduran (sections 510(a) and 541(a)), be engaged in the corresponding activity (sections 510(c) and 541(c)) and be able to read and write (sections 510(d) and 541(d));

restrictions on the right to strike, namely:

- requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike (sections 495 and 563);
- the ban on strikes being called by federations and confederations (section 537);
- the power of the Minister of Labour and Social Security to end disputes in the petroleum production, refining, transport and distribution services (section 555(2));
- the need for government authorization or a six-month period of notice for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State (section 558);
- the submission to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), for collective disputes in public services which are not essential in the strict sense of the term (sections 554(2) and (7), 820 and 826).

In this regard, the Committee regrets once again that the Government does not refer specifically in its report to the comments that it has been making for many years. The Committee once again expresses the strong hope that the Government will take measures without delay to amend the above legislative provisions so as to bring them into conformity with the requirements of the Convention and recalls that it may have recourse to the technical assistance of the Office for this purpose. The Committee requests the Government to provide information in its next report on any measures adopted in this regard.

[The Government is asked to report in detail in 2001.]

Jamaica (ratification: 1962)

The Committee notes that the Government's report has not been received.

The Committee recalls that for over 20 years, it has been commenting on the need to amend provisions of the Labour Relations and Industrial Disputes Act No. 14 of 1975, as amended ("the Act"), which empower the Minister to submit an industrial dispute to the Industrial Disputes Tribunal and hence to terminate any strike. The Committee has

noted in the past that the Minister's powers to refer an industrial dispute to the Tribunal are too broad, the list of essential services contained in the first schedule to the Act is also too extensive and the notion of a strike which is likely to be "gravely injurious to the national interest" can be interpreted very widely.

The Committee noted that in its most recent report, the Government had stated that it was making significant progress in reforming the Act through the Labour Advisory Committee. It had informed the Committee that an amendment to the first schedule of the Act had been proposed, which would result in the deletion of the following services from the list of those deemed to be essential: public passenger transport service; telephone services; any business the main functions of which consist of the issue and redemption of securities, government securities and the trading in such securities; management of the official reserves of the country; administration of exchange control; providing banking services to the Government; and air transport services for the carriage of passengers, baggage, mail or cargo destined to or from Jamaica or within Jamaica. With respect to the power of the Minister to refer an industrial dispute to compulsory arbitration, the Government had stated that "the ILO's concern has been noted. This section of the Act is still in the process of revision. Any revised decision on this particular section of the Act will be communicated to the ILO as soon as possible". It noted further that the amendments that had been proposed thus far had emanated from the Labour Market Reform Committee, which considered the amendments necessary in the light of changes that have taken place over the years.

The Committee once again recalls that the provisions of the Act can be broadly interpreted in such a way as to permit the use of compulsory arbitration in situations other than those involving essential services or an acute national crisis. It therefore expresses the firm hope that the proposals of the Labour Market Reform Committee to amend the list of essential services will be adopted at an early date, and that the list will be further restricted to limit it to essential services in the strict sense of the term, namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The discretion of the Minister to amend the first schedule should also be limited by such criteria. Furthermore, the Committee hopes that serious attention will be given to amending the other provisions of the Act providing the Minister with extensive powers to refer an industrial dispute to the Tribunal (sections 9, 10 and 11A). The Committee again recalls that the imposition of compulsory arbitration should be clearly limited to essential services or situations of acute national crisis; otherwise, recourse to compulsory arbitration may only occur at the joint request of the parties concerned in the dispute. The Committee requests the Government to indicate in its next report any progress made in this regard.

[The Government is asked to report in detail in 2001.]

Japan (ratification: 1965)

The Committee notes the information in the Government's report, as well as the observations made by the Japan Federation of Prefectural and Municipal Workers' Unions (JICHOREN), the National Network of Fire-Fighters (FFN), the Tokyo Zenrodosha Kumiai Labour Union (NUGW), the Japan National Hospital Workers' Union (JNHU/ZEN-IRO), and the Japanese Trade Union Confederation (JTUC-RENGO). As concerns these last two observations, the Committee notes that no reply

has yet been received from the Government. It therefore requests the Government to respond to the matters raised therein in its next report.

1. *Denial of the right to organize of fire-fighting personnel.* In its previous comments, the Committee recalled that the Committee on the Application of Standards of the International Labour Conference, when discussing the proposed system to establish fire defence personnel committees, had welcomed these developments with satisfaction as an important step towards the application of Convention No. 87. The Committee further noted, however, the hope expressed by the JCHOREN and the FFN in its previous comments under Convention No. 87 that the Local Public Service Law be amended in order to provide fire-fighting personnel with the right to organize. The Committee requested the Government to keep it informed of any relevant developments in the operation of the fire defence personnel committees and to indicate any steps envisaged to guarantee further the right to organize for fire defence personnel.

The Committee notes from the latest observations made by the JCHOREN and the FFN that they have considered the fire defence personnel committees as an advancement in providing an opportunity to state their own opinions and that they had made certain suggestions for further improvements. They further indicated that a survey conducted in 1999 demonstrated that there were a number of aspects of the present system that have not been working effectively. They maintain that the current system is not an alternative to the right to organize in regulations and once again express the hope that this right will be realized as soon as possible for fire defence personnel.

In this respect, the Committee notes the information provided in the Government's report concerning the functioning of the fire defence personnel committees and the results of their discussions. The Government has indicated that more than 150,000 pamphlets describing the system have been distributed to fire defence personnel and that, in order to ensure smoother application, the Government is providing each fire defence headquarters with guidance and advice. Moreover, in the future, the Government intends to continue to make efforts for smooth operation and firm establishment of this system, in cooperation with the parties concerned, such as organizations of workers, fire defence headquarters, etc.

The Committee takes due note of the concerns raised by the JCHOREN and the FFN, as well as of the efforts made and envisaged by the Government to ensure a smoother functioning of the fire defence personnel committees, in cooperation with the parties concerned. The Committee once again requests the Government to keep it informed of any pertinent developments in the operation of the fire defence personnel committees and to indicate any steps envisaged to guarantee further the right to organize for fire defence personnel.

2. *Prohibition of the right to strike of public servants.* In its previous comments, the Committee, having noted the comments made by JTUC-RINGO to the effect that there was a total ban on the right to strike for government employees both at the national and local levels, including for public schoolteachers, emphasized the importance of taking measures so that public servants who are not exercising authority in the name of the State were not sanctioned for having exercised the right to strike.

The Committee notes the distinction made in the Government's report in this regard to "specified independent administrative institutions" and "independent administrative institutions other than specified". In the former, the Government indicates

that the personnel are national public employees and the right to strike is not granted, whereas in the latter, they are not national public employees and the right to strike is granted. The Government adds that the treatment of personnel differs between the two because operation delays in specified independent administrative institutions are deemed to directly and markedly hamper the stability of national life or the society and the economy.

The Committee recalls that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State (see General Survey on freedom of association and collective bargaining, 1994, paragraph 158). It recalls that the earlier comments of JTUC-RENGO had also referred to public schoolteachers who the Committee does not consider to fall within the abovementioned category. The Committee therefore requests the Government to indicate in its next report the measures taken or envisaged to ensure that public servants who are not exercising authority in the name of the State, including public schoolteachers, are not sanctioned for having exercised the right to strike. Furthermore, it requests the Government to provide further information on the types of institutions classified as "specified independent administrative institutions".

3. *Compensatory guarantees for hospital workers.* In its previous comments, the Committee had noted the conclusions of the Committee on Freedom of Association in Case No. 1897 submitted by the Japan National Hospital Workers' Union to the effect that the National Personnel Authority (NPA) which had been set up to compensate for the prohibition of the right to strike of public servants had issued a decision concerning night duty of nurses which had still not been implemented over 30 years later. The Committee drew the Government's attention to the need to provide compensatory guarantees to workers whose right to strike was restricted. Such compensatory guarantees should be impartial and rapid and arbitration awards should be binding on both parties and implemented rapidly and completely (see General Survey, op.cit., paragraph 164.) Noting the recent comments made by the Hospital Workers' Union, the Committee requests the Government to send any observations it might have on the matters raised in its next report.

Kuwait (ratification: 1961)

The Committee takes note of the Government's report as well as the statement of the Government representative to the Conference Committee in 2000 and the discussion that followed.

The Committee recalls that it has commented for several years on the need to repeal or amend the following provisions of the Labour Code (Act No. 38 of 1964), which are contrary to the Convention.

Article 2 of the Convention

The exclusion from the scope of the Code, and thus from the protection afforded by the Convention, of domestic workers (section 2 of the Code as modified in 1956).

The requirement of at least 100 workers to establish a trade union (section 71) and ten employers to form an association (section 86).

The prohibition to join a trade union for individuals of under 18 years of age (section 72).

The requirement of five years' residence in Kuwait for non-national workers before they may join a trade union, and the requirement that a certificate of moral standing and good conduct delivered by the competent authority be obtained in order to join a trade union (section 72).

The requirement that a certificate be obtained from the Minister of the Interior stating that he has no objection to any of the founding members, before a trade union may be established, and the requirement that at least 15 members must be Kuwaiti in order to found a trade union (section 74).

The prohibition to establish more than one trade union per establishment, enterprise or activity (section 71).

Articles 5 and 6

The restriction imposed on trade unions to join federations only where the activities are identical, or where industries are producing the same goods or supplying similar services (section 79).

The prohibition for organizations and their federations to establish more than one general confederation (section 80).

The single trade union system established under sections 71, 79 and 80, read together.

Article 3

The ban on the right to vote and to be elected for unionized workers not of Kuwaiti nationality, except to elect a representative having the right only to voice their opinions with the Kuwaiti union officers (section 72).

The prohibition on trade unions from engaging in any political or religious activity (section 73).

The wide powers of supervision of the authorities over trade union books and registers (section 76).

The reversion of trade union assets to the Ministry of Social Affairs and Labour in the event of dissolution (section 77).

The Committee takes note of the Government's reference to a draft law to modify the Labour Code (Act No. 38 of 1964). The Government states that the draft law has been upgraded and would incorporate the comments made by the Committee. In particular, the Government indicates that with respect to the exclusion from the scope of the Labour Code of 1964 of specific categories of workers, sections 97 and 98 of the new draft Labour Code would eliminate these restrictions. Furthermore, sections 103, 106 and 110 of the said draft would ensure conformity with the provisions of the Convention with respect to the following points:

the requirement of a certificate of good conduct from the Ministry of the Interior by the founding member of a union;

the reversion of a trade union's assets to the Ministry of Social Affairs upon dissolution;

the impossibility of an administrative dissolution.

The Government also indicates that section 99 of the new draft Labour Code would set down the procedure for the establishment of workers' and employers' organizations. The Committee observes that draft section 99 provides that the meeting of a number of workers or a few employers, constituted in a general assembly, would be in charge of adopting founding statutes guided by the standard statutes promulgated by a ministerial decision. In this regard, the Committee considers that any legislative or administrative provisions concerning the preparation, content, amendment, acceptance or approval of constitutions and rules of workers' or employers' organizations which go beyond formal requirements may hinder the establishment and development of organizations and constitute interference of the public authorities in trade union affairs, contrary to *Article 3(2)* of the Convention (see General Survey on freedom of association and collective bargaining, 1994, paragraph 111), and requests the Government to transmit, in its next report, the ministerial decision containing said standard statutes, in order to examine their compatibility with the Convention.

Thus, noting that there are still discrepancies between the draft law and the Convention, the Committee hopes that said draft law, with the necessary amendments, will rapidly be adopted and promulgated. It again urges the Government to take the necessary measures in the near future to ensure that the legislation on which it has been commenting for several years is brought into conformity with the requirements of the Convention.

[The Government is asked to report in detail in 2001.]

Kyrgyzstan (ratification: 1992)

The Committee notes that since the entry into force of this Convention in 1993 in Kyrgyzstan, the Government's first report has not been received. It hopes that a report will be provided for examination by the Committee at its next session and that the report will contain detailed replies to the questions raised in the report form on the application of the Convention, which has been forwarded to the Government.

Liberia (ratification: 1962)

The Committee notes that the Government's report has not been received.

The Committee recalls that its previous comments concerned the need to amend or repeal:

Decree No. 12 of 30 June 1980 prohibiting strikes;

section 4601-A of the Labour Practices Law prohibiting agricultural workers from joining industrial workers' organizations;

section 4102, subsections 10 and 11, of the Labour Practices Law providing for the supervision of trade union elections by the Labour Practices Review Board; and

section 4506 prohibiting the workers of state enterprises and public service from organizing.

The Committee had recalled that these provisions were contrary to *Articles 2, 3, 5 and 10 of the Convention*.

The Committee had noted the indication in a Government's previous report that it had submitted Decree No. 12 prohibiting strikes and all of the remaining provisions above to the national legislature for their repeal. It further noted that the Government had received assurances from the legislature that these repealing Acts would be passed at its then current session. The Committee requests the Government to indicate in its next report the progress made in this regard and to supply copies of any and all of the repealing Acts as soon as they have been adopted.

Lithuania (ratification: 1994)

The Committee notes the information contained in the Government's report and the reply to its previous direct request. The Committee also notes the information provided by the Lithuanian Workers' Union (LWU) concerning the application in practice of the Act of 1992 on the settlement of collective disputes.

Articles 3 and 10 of the Convention. Right of workers' organizations to organize their activities without interference from the public authorities. In its previous comments, the Committee recalled the principles it had formulated as regards the right to strike and requested the Government:

- (a) to amend section 10 of the Act of 1992 on the settlement of collective disputes to lift the prohibition of the right to strike by workers who are not employed in essential services in the strict sense of the term;
- (b) to define the compensatory guarantees afforded to workers employed in essential services in the strict sense of the term;
- (c) to specify the legal framework and procedure for declaring a state of emergency (as strikes may be prohibited in regions where such state is declared) under section 10 of the Act of 1992 on the settlement of collective disputes;
- (d) to indicate whether there existed penal provisions, enforceable by prison sentences, restricting the right of workers to participate in industrial action in public transport, and public and social services.

1. The Committee notes that the Government merely repeats the information already provided as regards point (a), and that it did not reply as regards point (b). The Committee therefore requests, once again, the Government:

- (a) to amend section 10 of the Act of 1992 on the settlement of collective disputes to lift the prohibition of the right to strike by workers who are not employed in essential services in the strict sense of the term;
- (b) to supply information on the compensatory guarantees afforded to workers employed in essential services in the strict sense.

In doing so, the Committee takes particularly into account the information provided by the LWU, which states that it is practically impossible to declare a legal strike under the Act of 1992 on the settlement of collective disputes as, for instance, in a recent dispute, which is the subject matter of a pending complaint before the Committee on Freedom of Association: the City of Vilnius has invoked section 12 of this Act to order that 70 per cent of the city transport operation be maintained as a minimum service; and recourse to section 13 of the same Act has been made, which provides that

the courts may "for specially important reasons" delay for 30 days a strike that has not yet begun and delay for a further period of 30 days a strike that has already begun.

The Committee refers once again to the principles it has developed on these issues (see the 1994 General Survey on freedom of association and collective bargaining, paragraphs 152-164). The Committee considers that while authorities may establish a system of minimum service in sectors such as public transport, it must be a genuinely minimum service, that is one which is limited to meeting the basic needs of the population while maintaining the effectiveness of strike pressure. In the Committee's view, 70 per cent of the city transport operation cannot be considered an acceptable minimum service. Furthermore, the workers' organization affected should be able to participate in the definition of this minimum service with the employer and the public authorities.

2. The Committee notes, as regards point (c) above, that the Ministry of Internal Affairs is currently drafting the Act which will regulate situations of state of emergency. The Committee recalls that such restrictions should be for limited periods and may only be justified in situations of acute national crisis (see General Survey, *op. cit.*, paragraphs 41 and 152).

3. The Committee notes, as regards point (d) above, that the relevant sections of the Criminal Code were abrogated by Law No. 1.551, and that a new draft Criminal Code submitted to the Parliament on 18 November 1999 should be adopted in year 2000; the Committee requests the Government to transmit, in its next report, the text of Law No. 1.551 as well as the relevant provisions of the new Criminal Code.

The Committee reminds the Government that it may avail itself of the technical assistance of the ILO as regards all the abovementioned points, and requests it to provide in its next report information on the measures taken or contemplated to bring the legislation into conformity with the Convention, and to communicate copies of the relevant texts once they are adopted.

The Committee is addressing a request on certain other points directly to the Government.

Madagascar (ratification: 1960)

The Committee notes the information contained in the Government's report and recalls that its previous observations concerned the following points.

1. *Right of workers, without distinction whatsoever, including seafarers, to establish and join organizations.* The Committee recalls that seafarers are excluded from the scope of the 1993 Labour Code (article 1). However, it notes the information provided by the Government to the effect that Act No. 99.028 of 3 February 1999 revising the Maritime Code refers to "seafarers' trade unions" in section 3.3.02 and that the reference to "seafarers' trade unions" in this section confirms the freedom of association and exercise of trade union rights by seafarers, in accordance with article 31 of the Constitution of 8 April 1998, which provides that "The State recognizes the right of every worker to defend his interests through union activity and in particular through the freedom to form a union." The Committee had already noted that the national legislation granted seafarers certain rights related to the right to organize (the right to conclude collective agreements to determine their wages, section 3.05.03 of the

Maritime Code, as amended in 1966; procedures for the settlement of collective disputes and the right to strike after an arbitration award has been contested; Act No. 70-002 of 23 June 1970 respecting individual and collective disputes in the merchant marine and its implementing Order No. 3012-DGTOP/SSM of 1970). However, the Committee considers that the legislation should contain specific provisions granting seafarers the right to organize. It therefore requests the Government to take the necessary measures explicitly to guarantee seafarers the right to establish and join trade unions. The Committee also requests the Government to provide a copy in the near future of Act No. 99,028 of 3 February 1999 revising the Maritime Code.

2. *Right of workers to establish organizations without previous authorization.* The Committee notes the information provided in the Government's report to the effect that a revision of Act No. 94,029 of 25 August 1995 issuing the Labour Code is currently being completed. The Government states that it will provide copies of any texts relating to the procedures for the establishment, organization and functioning of trade unions once they have been published, after the enactment of the revised Code. The Committee trusts that, in accordance with the requirements of *Article 2 of the Convention*, all workers, including seafarers, will be able to establish trade union organizations without previous authorization once they have deposited their statutes with the competent authorities. The Committee also requests the Government to provide copies of texts governing procedures for the exercise of the right to organize.

3. *Requisitioning of persons.* The Committee had noted that the conditions giving rise to the right to requisition, as set out in section 21 of Act No. 69-15 of 15 December 1969 respecting the requisitioning of persons and goods, which allows the requisitioning of workers where a sector of national life or a part of the population is endangered, are too broad to be compatible with the principles of freedom of association. It had thereafter taken due note of the proposals made by the Government to amend section 21. The Committee had nevertheless noted that these amendments included certain services, such as garbage collection, radio and television broadcasting, post and telecommunications, banking, whose interruption does not endanger the life, personal safety or health of the population. In the view of the Committee, recourse to requisitioning is to be avoided except where, in particularly serious circumstances, essential services have to be maintained. Requisitioning may be justified by the need to ensure the operation of essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population. The Committee takes due note of the information provided in the Government's report to the effect that it will transmit the Committee's comments to the ministry concerned so that it can take the necessary measures with a view to improving the application of the Convention. The Committee requests the Government to keep it informed of the measures adopted in this respect.

The Committee hopes that the Government will take these comments into account in the adoption of the envisaged measures and requests it to keep it informed in its next report of the measures taken in this respect.

Mali (ratification: 1960)

The Committee takes note of the information contained in the Government's report.

Article 3 of the Convention. Right of workers' organizations to formulate their programmes without any interference by public authorities which would restrict this right. The Committee recalls that its previous comments addressed the need to amend section 229 of the Labour Code of 1992 in order to limit the Minister of Labour's authority to impose arbitration in order to end strikes liable to cause an acute national crisis. The above provision allows the Minister of Labour to impose arbitration not only for disputes involving essential services, the interruption of which is likely to endanger the life, health or safety of the population, which is compatible with the principles of the freedom of association, but also for disputes liable to "compromise the normal operation of the national economy or concerning a vital industrial sector".

The Committee notes the Government's statement that section 229 of the Code has not been applied in practice. It also notes with interest the Government's indication that, in order to bring the national legislation into conformity with the intent of the Convention, it has embarked on a revision of the Labour Code which provides that paragraph 2 of section L.229 will be worded as follows: "For disputes involving essential services, the interruption of which would be likely to endanger the life, safety or health of persons, the minister responsible for labour, in the event of disagreement by one of the two parties, shall refer the dispute to the Council of Ministers, which may make the decision of the Arbitration Council binding." The Committee asks the Government in its next report to supply the text of section 229 of the Labour Code as amended to bring the national legislation into harmony with the Convention on this point.

The Committee is also addressing a direct request to the Government on the question of the restriction in the law which impairs the right of minors to join trade unions.

Malta (ratification: 1965)

The Committee takes note of the information provided by the Government in its report and notes in particular that during the last year, no industrial action was affected as a result of compulsory arbitration. The Government indicates that whenever the Minister responsible for labour receives applications for referral of trade disputes to the Industrial Tribunal, he refers these disputes to the department for conciliation and that it is only after all avenues have been sought by all the social partners without resulting in settlement that a trade dispute is referred for hearing by the Industrial Tribunal. Also, the Government has just made public a legislative proposal which will enhance the Malta Council for Economic Development, by widening its scope to include the social development of Malta in its terms of reference. The Committee takes note of this information and asks the Government to inform it in its next report of any development in this regard and to forward a copy of the legislation adopted.

The Committee has to recall once again that it has been making comments on the incompatibility between the Industrial Relations Act and the provisions of the Convention for more than 20 years and therefore regrets that no amendments have been made to this date to improve voluntary procedures for the settlement of industrial disputes. The Committee can only reiterate once again with regret the discrepancies between the legislation (sections 27-34 of the 1976 Industrial Relations Act) and the Convention relating to the discretionary powers of the Minister to impose compulsory

arbitration whereas such recourse should be restricted to the following cases: (a) public servants exercising authority in the name of the State; (b) essential services, namely those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (c) situations of acute national crisis; or (d) cases in which both parties request arbitration.

The Committee expresses again the firm hope that the Government will take the necessary measures in the very near future to bring its legislation into greater conformity with the Convention.

Mauritania (ratification: 1961)

The Committee notes that the Government's report has not been received. However, it notes the observations made by the Free Confederation of Workers of Mauritania (CLTM) concerning the application of the Convention. The Committee recalls that its previous comments concerned the following points:

1. *Article 3 of the Convention: Right of organizations to elect their representatives in full freedom.* The Committee emphasizes once again that section 7 of the Labour Code, as amended by Act No. 93-038 of 20 July 1993, limits the right of access to trade union office to nationals of Mauritania. The Committee recalls that the legislation should be amended to enable organizations to choose their officers in full freedom and to allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey on freedom of association and collective bargaining, 1994, paragraph 118).

Articles 3 and 10: Right of organizations to organize their activities and to formulate their programmes freely in order to further and defend the interests of their members. The Committee notes once again that sections 39, 40, 45 and 48 of Book IV of the Labour Code which is currently in force permit the prohibition of strikes in the event of referral to compulsory arbitration. It hopes that the Labour Code will be amended to confine the prohibition of strikes solely to the essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis.

The Committee once again requests the Government to provide information on the measures which have been taken or are envisaged to amend the Labour Code with a view to bringing the legislation into conformity with the requirements of the Convention.

2. The Committee notes the observations made by the Free Confederation of Workers of Mauritania to the effect that the authorities refuse to recognize the right of fishermen and fishmongers to organize as workers, on the grounds that they are not employees. The CLTM emphasizes the great pressure exercised by the authorities to induce these workers to withdraw from the CLTM, and the obligation placed on taxi drivers and cart drivers to organize within the National Transport Federation. It adds that fishermen, fishmongers, taxi drivers and cart drivers are obliged to pay daily taxes and compulsory contributions and dues by the authorities, by the Employers' Fishing Federation and by the National Transport Federation.

The Government indicates that these allegations are not founded since no authorities took any decision in this sense. The Government adds that the national

authorities are not involved at any stage in the election process of workers' representatives and that the labour courts which are competent on issues related to these elections never received a complaint of the CLTM on this matter. The Committee takes note of this information.

Mexico (ratification: 1950)

The Committee notes the Government's report on the application of the Convention in relation to the points set out below.

1. *Trade union monopoly imposed by the Federal Act on State Employees and the Constitution.* The Committee recalls that for many years it has been commenting on the following provisions of the Federal Act on State Employees and the Constitution:

- (i) the prohibition of the coexistence of two or more unions in the same state body (sections 68, 71, 72 and 73);
- (ii) the prohibition of a trade unionist from leaving the union of which he or she has become a member (section 69);
- (iii) the prohibition of re-election in trade unions (section 74);
- (iv) the prohibition of unions of public servants from joining trade union organizations of workers or rural workers (section 79);
- (v) the extension of the restrictions applicable to trade unions in general to the single Federation of Unions of Workers in the Service of the State (section 84); and
- (vi) the imposition by law of the trade union monopoly of the National Federation of Banking Unions (section 23 of the Act issued under article 123(B)(XIIIbis) of the Constitution).

The Committee once again expresses the firm hope that the Government will take measures to repeal or amend these legislative provisions with a view to bringing them into line with interpretative opinion No. 43/1999, issued by the Supreme Court of Justice of the Nation on 27 May 1999. Indeed, the Committee notes with interest that by virtue of this opinion the exercise of the right to organize of Mexican workers is guaranteed by the ruling that the imposition of a single trade union for a government department violates the right of workers to freedom of association set out in article 123(B)(X) of the Political Constitution. The Committee once again requests the Government to inform it in its next report of any measure adopted in this respect.

2. *Prohibition of foreigners from being members of trade union executive bodies (section 372(II) of the Federal Labour Act).* The Committee notes that, according to the Government, it is not currently being envisaged to reform the above legislation. Nevertheless, the Committee recalls that the autonomy of organizations can be effectively guaranteed only if their members have the right to elect their representatives in full freedom. The public authorities should therefore refrain from any interference which might restrict the exercise of this right as regards conditions of eligibility of representatives. The Committee expresses the firm hope that the Government will find the most appropriate formula for amending the above provision so that foreign workers have access to trade union office, at least after a reasonable period of residency in the host country, or where there is reciprocity between countries, for at least a specific

proportion of trade union officers. The Committee requests the Government to provide information in its next report on any measure envisaged in this respect.

3. *Right to strike of employees in banking institutions belonging to the public sector.* The Committee refers once again to the restrictions on the right to strike of employees in banking institutions belonging to the public sector (section 5 of the Act issued under article 123(B)(XIIIbis) of the Constitution of 1990), and in particular the limitation on the exercise of the right to strike in the sense that employees in the public service may only call a strike in the event of the general and systematic violation of the rights set out in article 123(B) of the Constitution (section 94 of the Federal Act on State Employees). Although the Committee notes that, according to the Government, employees of banking institutions, who are covered by article 123(A) of the Constitution, can exercise the right to strike, it is nevertheless bound to observe that this is a limited right. While recalling that the right to strike is one of the essential means available to workers and their organizations to promote their economic and social interests (see General Survey on freedom of association and collective bargaining, 1994, paragraph 148), the Committee emphasizes that, although in certain circumstances strikes may be governed by provisions laying down conditions for, or restrictions on, the exercise of this fundamental right (General Survey, *op. cit.*, paragraph 151), in borderline cases respecting restrictions on the public service, one solution might be to provide for the maintaining by a defined and limited category of staff of a negotiated minimum service when a total and prolonged stoppage might result in serious consequences for the public (General Survey, *op. cit.*, paragraph 158). The Committee therefore once again requests the Government to take the necessary measures to amend the provisions which are in violation of the Convention, so that the legislation is explicitly adjusted to reflect national practice and the principles of freedom of association. The Committee also requests the Government to keep it informed in its next report of any measure adopted in this respect.

4. *Right to strike of state employees.* The Committee recalls that in its previous comments it also referred to the requirement of two-thirds of workers in the public body concerned to call a strike (section 99(II) of the Federal Act on State Employees). The Committee notes that, according to the Government, the repeal of the provision setting out this requirement is not currently envisaged. The Committee recalls that public servants who do not exercise authority in the name of the State should benefit from the right to strike without excessive restrictions and that, in this respect, it would be preferable to amend the legislation so that only a simple majority of votes cast is required. The Committee therefore requests the Government to keep it informed in its next report of any positive developments in this respect.

Mozambique (ratification: 1996)

The Committee notes the information provided by the Government in its last report. It notes that Labour Act No. 8/85, as amended in 1998 (8/98), provides in section 3(3) that the legal employment relationship of public servants is governed by specific conditions of service. A similar provision is contained in section 35 of Act No. 23/91 of 1991 respecting the exercise of freedom of association. Furthermore, the Government indicates in its latest report that this latter legislation does not apply to public servants, who do not therefore enjoy the right of association.

The Committee emphasizes in this respect that, in accordance with *Article 2 of the Convention*, all public servants and officials should have the right to establish occupational organizations, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings (see General Survey on freedom of association and collective bargaining, 1994, paragraph 49). The Committee therefore hopes that the Government will take measures in the near future to guarantee, in the special conditions of service of public servants, their right of association not only for cultural and social purposes, but also for the purpose of furthering and defending their occupational and economic interests (see General Survey, *op. cit.*, paragraph 52). The Committee notes in this respect that the technical assistance of the Office is at the Government's disposal to assist it in giving effect to the Convention.

Myanmar (ratification: 1955)

The Committee notes with regret that the Government's report has not been received.

In its previous comments, the Committee noted the special paragraph in the Conference Committee on the Application of Standards 1999 report for continued failure by Myanmar to implement the Convention.

The Committee had further noted that the drafting of a new State Constitution was under way, as well as the review and redrafting of old labour laws, including the Trade Unions Law. The Committee had recalled, however, that the Government has referred to the drafting of new labour legislation and a new Constitution for several years now. It deplores that no specific progress or developments have been communicated to the Committee in this regard.

The Committee recalls that it has been commenting upon the continued failure to apply this Convention, both in law and in practice, for over 40 years. In its previous comments, it had urged the Government, in particular, to adopt the necessary measures to ensure the right of workers to establish, without previous authorization, and to join, subject only to the rules of the organizations concerned, first-level unions, federations and confederations of their own choosing for the furtherance and defence of their interests and to ensure the right of first-level unions, of federations and of confederations to affiliate with international organizations (*Articles 2, 5 and 6 of the Convention*).

The Committee deeply deplores the lack of cooperation on the part of the Government, manifested in particular by a total absence of reports under this Convention over the past years despite a serious failure in applying its provisions.

The Committee must once again reiterate the urgent need for the Government to adopt the necessary measures to ensure fully the right to organize, and the right to affiliate with international organizations, without impediment. Furthermore, it once again asks the Government to furnish with its next report a copy of the most recent draft revision of the Trade Unions Law so that it might assess the draft's conformity with the Convention.

[The Government is asked to supply full particulars to the Conference at its 89th Session.]

Namibia (ratification: 1995)

The Committee notes the information provided in the Government's report.

Articles 3 and 10 of the Convention. Right to strike in export processing zones. In its previous comments, the Committee noted the need to repeal the provision in the Export Processing Zones Amendment Act, 1996, which prohibited any employee from taking action by way of, or participating in, a strike in an export processing zone (EPZ), an action for which the worker is liable to disciplinary penalty or dismissal. The Committee notes with interest from the Government's latest report that the tripartite Labour Advisory Council agreed to recommend to the Minister of Labour to advise Parliament by June 2001 not to re-enact the provision in the EPZ Amendment Act which prohibits strikes in the zones. The Government adds that it can only communicate the official government position once this issue is discussed in Parliament. The Committee hopes that the necessary measures will be taken in the near future to ensure that workers in export processing zones are not penalized for strike action taken in defence of their interests and requests the Government to keep it informed of the progress made in this regard.

Articles 2 and 3. Application of the Labour Act and the provisions of the Convention in EPZs. In its previous comments, the Committee had noted that section 8(10) of the EPZ Amendment Act provided that the entire section, which provides in particular for the application of the Labour Act to EPZs (section 8(1)), will be deemed to have been repealed if not re-enacted by June 2001. The Committee requests the Government to keep it informed of the discussions held in Parliament in respect of the re-enactment of the general application of the Labour Act and to indicate in its next report whether the Labour Act will continue to be applied to export processing zones.

Nicaragua (ratification: 1967)

The Committee notes the Government's report. It again stresses that certain provisions of the Labour Code of 1996 (Act No. 185 of 30 October 1996), of the Regulation on trade union associations of 1997 (Decree No. 55-97) and of the Civil Service and Administrative Careers Act of 1990 (Act No. 70 of March 1990) call for the following comments:

- (1) the suspension, due to the failure to adopt implementing regulations, of the Civil Service and Administrative Careers Act of 1990, section 43(8) which envisages the right to organize, strike and collective bargaining of public servants;
- (2) restrictions on the access of foreign nationals to trade union office (section 21 of the Regulation on trade union associations of 1997);
- (3) restrictions on the functions of federations and confederations (section 53 of the Regulation on trade union associations of 1997);
- (4) the possibility of submitting a dispute to compulsory arbitration when 30 days have elapsed from the calling of the strike (sections 389 and 390 of the Labour Code); and
- (5) grounds on which a worker may lose her or his trade union membership, which are left to the discretion of the public authority (section 32 of the Regulation on trade union associations of 1997).

With regard to the suspension of the Civil Service and Administrative Careers Act of 1990, the Committee notes that, according to the Government, the preparation of new legislation in the same field is being examined in the context of the modernization of the State. The Committee regrets to observe that public servants are denied in practice their fundamental rights under this Convention. The Committee requests the Government to recognize the right of public servants to establish organizations to further and defend their interests in accordance with *Article 2 of the Convention*, and to send it a copy of the new legislation as soon as it is adopted.

In relation to the restrictions on the access of foreign nationals to trade union functions, set out in section 21 of the Regulation on trade union associations, the Committee notes that, according to the Government's indications, in order to be a member of an employers' or workers' organization, it is necessary for the person concerned to have the qualities required by the law, which does not specify whether or not it is a requirement to have Nicaraguan nationality unless so provided by the Constitution or rules of the workers' organization (sections 21 and 22 of the Regulation on trade union associations). The Committee recalls that, by virtue of *Article 3* of the Convention, workers' organizations shall have the right to elect their representatives in full freedom. It also recalls that national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey on freedom of association and collective bargaining, 1994, paragraph 118).

With reference to the restrictions on the exercise of the right to strike by federations and confederations, the Committee notes that, under the terms of section 37 of the Regulation on trade union associations of 1997, "federations shall be subject to the same rules and obligations as trade unions, with the specific characteristics deriving from the different nature of their organization, and shall enjoy the same prerogatives". However, the Committee notes that, by virtue of section 48 of the same text, "confederations shall be governed by all the provisions respecting federations, except for specific provisions governing them", while section 53 confirms that "in labour disputes, federations and confederations shall only intervene to provide advice and the moral or economic support needed by the workers concerned". The Committee recalls that, in accordance with *Articles 3, 5 and 6* of the Convention, workers' organizations, and the federations and confederations which they establish or join, shall have the right to organize their activities and to formulate their programmes.

In relation to the maintenance of compulsory arbitration in sections 389 and 390 of the Labour Code when 30 days have elapsed from the calling of the strike, the Committee notes the Government's comments in its report to the effect that this cannot resolve an economic crisis after this time period has elapsed. On these grounds, taking into consideration the provisions of section 247 of the new Labour Code (the exercise of the right to strike in public services and services of collective interest may not be extended to situations which endanger the life or safety of the population), the Committee considers that, once this time period has elapsed, the dispute is referred to a compulsory arbitration procedure, with the subsequent award only being binding on the parties where it is accepted by all of them. The Committee also considers that such an award should be binding only in cases in which the strike has been called in an essential service in the strict sense of the term, or in the context of an acute national crisis.

The Committee hopes that the Government will continue making efforts to bring the provisions of sections 389 and 390 of the Labour Code of 1996, and sections 21, 32 and 53 of the Regulation on trade union associations of 1997 into conformity with the requirements of the Convention. It requests the Government to provide information in its next report on any progress achieved in this respect.

Niger (ratification: 1961)

The Committee notes the information provided by the Government in its report. It recalls that its previous comments concerned the following points:

1. *Article 4 of the Convention: Dissolution by administrative authority.* The Committee noted with concern that the Government had dissolved by administrative authority the National Trade Union of Customs Officials of Niger (SNAD) on 20 March 1997 and it urged the Government to indicate whether the SNAD had been re-established since that time in accordance with its rights. In this regard, the Committee notes with interest the signature of a protocol agreement between the Government and the Confederation of Workers' Trade Unions of Niger (USTN), dated 21 April 2000, providing for the rehabilitation of the SNAD and the re-establishment of its rights in June 2000.

2. *Articles 3 and 10: Rights of workers' organizations to strike in defence of their economic, social and occupational interests.* The Committee noted that section 9 of Order No. 96-009 of 21 March 1996 provides that in exceptional cases arising as a result of the need to preserve the general interest, all state employees, or those of territorial authorities, may be requisitioned. The Committee expressed the view that the scope of this provision is too broad and that it should be restricted to cases in which a work stoppage may give rise to an acute national crisis, to public servants exercising authority in the name of the State, or to essential services in the strict sense of the term, that is services the interruption of which endanger the life, personal safety or health of the whole or part of the population. In this regard, the Committee notes that the above protocol agreement between the Government and the USTN states that the Government shall undertake to convene the Advisory Commission on Labour and the Public Service as soon as possible with a view to finalizing the work of revising the new Labour Code, the Act respecting strikes and its implementing decree. The Committee requests the Government to transmit the texts respecting requisitioning which are adopted under the above protocol agreement. Furthermore, the Committee once again requests the Government to provide it with copies of the requisition orders issued in the case of strikes, until such time as section 9 of Order No. 96-009 of 21 March 1996 is amended.

Nigeria (ratification: 1960)

The Committee notes that the Government's report has not been received.

It recalls that its previous comments concerned a certain number of divergencies between the national legislation and the provisions of the Convention.

Article 2 of the Convention (the right of workers to form and join organizations of their own choosing)

(a) Legislatively imposed trade union monopoly and the restructuring of industrial unions under Decree No. 4 of 1996

The Committee notes that under section 3(2) of the Trade Unions Act no trade union shall be registered to represent workers or employers in a place where a trade union already exists. Furthermore, the Committee notes that section 33(2) of the Act which deems all registered trade unions to be affiliated to the Central Labour Organisation which is named in the law (section 33(1)) has not been amended. The Committee requests the Government to indicate the measures envisaged to amend the Trade Unions Act in order to ensure that workers have the right to form and join the union of their own choosing at all levels outside the trade union specifically mentioned in the law if they so wish.

(b) Organizing in export processing zones

Noting that section 4(e) of the Export Processing Zones Decree, 1992, sets forth the functions and responsibilities of the Export Processing Zones Authority to include the resolution of disputes between "employers and employees" (rather than workers' organizations or unions) in the zone and that, under section 13(1), no person shall enter, remain in or reside in a zone without the prior permission of the Authority, the Committee requests the Government to indicate the measures taken to ensure that zone workers may form and join the organization of their own choosing in the furtherance and defence of their occupational interests and, in particular, the measures taken to ensure that representatives of workers' organizations may have reasonable access to the zones so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization.

(c) Further obstacles

The Committee recalls that its previous comments also concerned the following discrepancies in the Trade Unions Act in respect of the right for workers to form organizations of their own choosing without previous authorization:

section 3(1) of the Act sets the excessively high requirement of 50 workers to form a trade union;

section 11 of the Act denies the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company, the Central Bank of Nigeria and Nigerian External Telecommunications.

It once again requests the Government to indicate the measures envisaged to amend the Trade Unions Act in respect of these matters in order to ensure full compliance with *Article 2*.

Article 3 (the right to elect officers in full freedom, to organize their administration and activities and to formulate programmes without government interference)

(a) The right to strike

1. *Export processing zones.* The Committee notes that section 18(5) of the Export Processing Zones Act provides that there shall be no strikes or lockouts for a period of ten years following the commencement of operations within a zone. The Committee recalls that such a prohibition is incompatible with the provisions of the Convention (see General Survey on freedom of association and collective bargaining, 1994, paragraph 169) and requests the Government to indicate the measures taken or envisaged to ensure that workers, including those in export processing zones, have the right to establish organizations of their own choosing and that such organizations have the right to organize their activities and to formulate their programmes without interference by the public authorities.

2. *Conditional check-off facilities.* The Committee notes that section 5 of the Trade Unions (Amendment) Decree No. 26 of 1996 which makes check-off payments to unions conditional upon the inclusion of "no-strike" clauses in collective agreements has not yet been repealed but has only been amended by Decree No. 1 to refer also to "no lock-out" clauses. The Committee considers that such a legislative requirement hinders the right of workers' organizations to formulate their programmes and activities without interference by the public authorities. It therefore requests the Government to indicate the measures taken or envisaged to allow workers' and employers' organizations to bargain freely on such an issue.

(b) Further obstacles

The Committee recalls its previous comments concerning the need to amend:

the possibility of imposing compulsory arbitration (other than in cases of essential services in the strict sense of the term and for public servants exercising authority in the name of the State or in the case of acute national crisis) under penalty of a fine or six months' imprisonment for any person failing to comply with a final award issued by the National Industrial Court (section 7 of Decree No. 7 of 1976 amending the Trade Disputes Act);

the broad powers of the Registrar to supervise the union accounts at any time (sections 39 and 40 of the Trade Unions Act) to ensure that such a power is limited to the obligation of submitting periodic financial reports, or in order to investigate a complaint.

The Committee requests the Government to indicate the measures envisaged to amend these provisions in order to ensure full conformity with the principles of freedom of association.

Article 4 (cancellation of registration by administrative authority)

The Committee notes the amendment made in 1996 to section 7(9) of the Trade Unions Act giving broad authority to the Minister to revoke the certification of any registered trade union due to "overriding public interest". Recalling that organizations of

workers and employers should not be liable to dissolution by administrative authorities, the Committee requests the Government to amend the Act by repealing the broad authority of the Minister to cancel registration so as to bring the legislation into full conformity with this Article of the Convention.

Articles 5 and 6 (international affiliation)

The Committee notes, that the Trade Unions (International Affiliation) (Amendment) Decree No. 2 of 1999 still provides that an application for affiliation must be submitted with details to the Minister for approval. While noting that a refusal of an application for international affiliation can be appealed to the National Industrial Court, the Committee considers that a provision which requires ministerial approval for international affiliation on the basis of a detailed application infringes on the rights of workers' organizations to affiliate with international workers' organizations freely. It therefore requests the Government to indicate the measures taken or envisaged to amend this Decree so that workers' organizations may affiliate with the international workers' organization of their own choosing free from interference by the public authorities.

Norway (ratification: 1949)

The Committee notes the information contained in the Government's report and the comments made by the Norwegian Oil Workers' Federation (OFS) in 1999.

Articles 3 and 10 of the Convention. In its previous comments, the Committee had recalled the need to bring the legislation into fuller conformity with the principles of freedom of association in relation to the right to strike and to limit any possibility of imposing legislative intervention to essential services in the strict sense of the term, that is to say, those the interruption of which would endanger the life, personal safety or health of whole or part of the population, or to public servants exercising authority in the name of the State. The Committee had noted the Government's indication that the Labour Law Council was working on a proposal for a new labour disputes Act and expressed its hope that the Bill would be in full conformity with the principles of freedom of association.

In its latest report, the Government has indicated that, given that the Labour Law Council report met with heavy opposition, it has not found it appropriate to develop further the Council's proposals. In 1999, the Government appointed a commission with representatives from all the major workers' and employers' organizations to review the system of collective bargaining and the settlement of industrial disputes. The workers' organizations represent 89.5 per cent of the unionized workforce. Among the issues which the commission will look into is the Norwegian practice on ad hoc legislative intervention in labour conflicts. The commission will present a report on any proposals for changes to the system by the end of 2000.

Taking due note of this information, the Committee recalls the need to limit the possibility of imposing legislative intervention in respect of industrial action to essential services in the strict sense of the term or to public servants exercising authority in the name of the State. It requests the Government, in the meantime, to take the necessary measures to ensure that any ad hoc legislative intervention in labour conflicts will be limited to the abovementioned cases and asks the Government to keep it informed of any

further developments in this regard and to provide a copy of the commission's report as soon as it has been issued.

Pakistan (ratification: 1951)

The Committee notes the information provided in the Government's report, as well as the observations made by the Federal Organization for Banks and Financial Institutions Employees (FOBFIE). The Committee further notes the conclusions and recommendations made by the Committee on Freedom of Association in Case No. 2006 (see 323rd Report, paragraphs 408-430, approved by the Governing Body in November 2000).

The Committee notes with satisfaction from the information supplied with the Government's report and the conclusions of the Committee on Freedom of Association that the ban on trade union activities in the Pakistan Water and Power Development Authority (WAPDA) has now been lifted. The Committee further notes from the report of the Committee on Freedom of Association that the ban on trade union activities in the Karachi Electric Supply Corporation (KESC) was to continue until 31 October 2000 and requests the Government to confirm in its next report that this ban has indeed been lifted and that the Presidential Ordinance No. VIII of 1999 which appeared to exclude workers at KESC from the purview of the 1969 Industrial Relations Ordinance has been repealed.

The Committee recalls that the other points which it has been addressing for many years concern the following serious discrepancies between the national legislation and the provisions of the Convention: denial of the rights guaranteed by the Convention to workers in export processing zones; the exclusion from the Industrial Relations Ordinance of public servants of grade 16 and above, and of forestry, railway and hospital workers; denial of the right to strike for civil aviation employees and employees of the Pakistan Television and Broadcasting Corporations, as well as other services not considered to be essential in the strict sense of the term, such as postal services and railways; restrictions on membership to bank unions and on their officers, and finally, a penalty of up to seven years' imprisonment for the creation of civil commotion, including illegal strikes, under the Anti-Terrorism Act of 1997.

As regards export processing zones (EPZs), the Committee notes with interest the indication in the Government's latest report that the exemption of EPZs from the application of the labour laws is likely to be lifted by the end of the year 2000 and that a separate set of rules will be framed that will be in consonance with the ILO Conventions ratified by Pakistan. The Committee hopes that the Government will be able to indicate in its next report the progress made in ensuring the rights guaranteed by this Convention to workers in EPZs and invites it to consider accepting the technical assistance of the Office in this regard.

The Committee notes with regret, however, that, with the exception of the abovementioned developments in respect of export processing zones and certain indications concerning civil aviation employees and employees of Pakistan Television and Broadcasting Corporations (PTV and PBC), the Government practically reiterates the same arguments it has been making for many years and that serious discrepancies continue to exist between the national legislation and the Convention on the issues mentioned above.

In respect of the information provided in the Government's report concerning the right to strike for employees in civil aviation and at PTV and PBC, the Committee requests the Government to provide further information in its next report concerning the establishment of minimum services at the PBC and to indicate any further developments enabling civil aviation and PTV employees to carry out industrial action without penalty.

Finally, the Committee notes the observations made by the Federal Organization for Banks and Financial Institutions Employees (FOBFIE) to the effect that banking companies are laying off their workers as a result of section 27-B of the Banking Companies' Ordinance (which restricts the possibility of becoming a member or officer of a bank union only to employees of the bank in question, under penalty of up to three years' imprisonment) in attempts to attack the trade unions in the banks. These attacks, according to the FOBFIE, have paralysed the trade unions and their cases in the superior courts for restoration have been pending for over three years now. In this respect, the Committee recalls its previous comments requesting the Government to give serious consideration to amend section 27-B so as to admit as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization. Such flexibility is particularly important in that it may help to avoid the types of regular dismissals aimed at weakening the trade union movement which are complained of above. The Committee requests the Government to reply to the observations made by the FOBFIE in its next report and to indicate the measures taken or envisaged to make this restriction more flexible along the lines indicated above.

As concerns the other points raised, the Committee is bound to refer to its previous detailed observations and urges the Government to amend its legislation accordingly in the very near future.

In addition, a request regarding certain points is being addressed directly to the Government.

[The Government is asked to report in detail in 2001.]

Panama (ratification: 1958)

The Committee notes the Government's report, and the conclusions and recommendations of the Committee on Freedom of Association in Case No. 1931, concerning the legal obligations on employers and their organizations, contrary to freedom of association principles (see 310th Report, paragraphs 493-507).

The Committee recalls that its previous comments related to the following provisions:

- the power of the Regional or General Labour Director to submit labour disputes to compulsory arbitration in order to stop a strike in a public enterprise including those which cannot be considered essential services in the strict sense of the term (among those, food and transport under sections 486 and 452(3) of the Labour Code;
- the requirement of 75 per cent of Panamanian nationals to establish a trade union (article 347 of the Labour Code);
- sections 174 and 178, final paragraph, of Act No. 9 ("establishing and regulating administrative careers"), of 1994, which lay down respectively that there shall not

be more than one association in an institution, and that associations may have provincial or regional chapters, but can have no more than one chapter per province;

section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code) which requires an excessively high number of members to establish an employers' occupational organization (ten) and an even higher number to establish a workers' organization (40) at the enterprise level;

article 64 of the Constitution, which requires Panamanian nationality to serve on the executive board of a trade union;

the obligation to provide minimum services with 50 per cent of the personnel in establishments which provide essential public services, which go beyond essential services in the strict sense of the term and which include transport, and the penalty of the summary dismissal of public servants for calling or participating in strikes which are prohibited or declared illegal, or failing to comply with the requirement respecting minimum service in the event of a strike (articles 152(14) and 185 of Act No. 9 of 1994); and

legislation interfering in the activities of employers' and workers' organizations (articles 493(1) and 497 of the Labour Code).

I. Compulsory arbitration in public service enterprises beyond essential services in the strict sense of the term

While the Government does not refer to this point in its report, the Committee recalls that, for food services, it would be possible to establish a minimum service to ensure users' basic needs (see General Survey on freedom of association and collective bargaining, 1994, paragraph 162). Moreover, transport services are not essential services per se, unless a strike in such services exceeds a certain duration or extent so that the health, safety or life of the population may be endangered (see 1994 General Survey, paragraph 160).

II. Requirement of 75 per cent of Panamanian nationals to establish a trade union

With reference to its previous comments, the Committee notes with satisfaction that section 347 of the Labour Code, by virtue of which "75 per cent of the members of any union shall be of Panamanian nationality" was repealed by section 70 of Act No. 44 of August 1995.

III. Prohibition of more than one association of public servants in an institution, and more than one chapter per province

The Committee notes that the national Government has established a commission to examine this matter and develop feasible solutions. The Committee recalls that any system of trade union unity or monopoly imposed either directly or indirectly by the law is not compatible with the principle of the freedom of workers and employers to establish organizations of their own choosing as set out in *Article 2 of the Convention*. The Committee requests the Government to provide information on the measures which are adopted to amend the legislation so that all public servants are able, if they so wish,

to establish and join trade union organizations of their own choosing. The Committee also requests a copy of the amended legislation.

IV. The excessively high number of members required by section 41 of Act No. 44 for the establishment of occupational organizations of employers and workers at the enterprise level

The Committee notes once again the Government's justification of these requirements on the grounds that they were the result of a tripartite consensus between the social partners, namely employers and workers, with the participation of the Government. In this respect, the Committee once again requests the Government to take the necessary measures to reduce the number of ten members required to establish an organization of employers and to reduce even further the minimum number of 40 workers required to establish a trade union organization at the enterprise level, leaving it at the discretion of the employers' and workers' organizations to determine these matters in their respective rules.

V. Constitutional requirement to be of Panamanian nationality to serve on the executive board of a trade union

The Committee notes the Government's statement to the effect that it can be difficult to amend the political Constitution, since special procedures have to be followed which require majorities which are not currently available to the Government. The Committee emphasizes that the national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (General Survey, op. cit., paragraph 118). The Committee once again hopes that the Government will take the relevant measures to eliminate this requirement from the political Constitution and will keep it informed of any progress made in this respect.

VI. Obligation to provide minimum services with 50 per cent of the personnel in establishments which provide essential public services (section 185 of Act No. 9 of 1994, "establishing and regulating administrative careers"), including transport services (section 486 of the Labour Code)

Sanctions: Summary dismissal of public servants for calling or participating in strikes which are prohibited or declared illegal, or failure to comply with minimum service requirements in legal strikes (section 152(14) of Act No. 9)

The Committee recalls that it is excessive to require the presence of 50 per cent of the personnel to provide minimum services in the case of essential services in the strict sense of the term. However, in services which are not essential in the strict sense of the term (such as transport), a *negotiated minimum service* could be established which is limited to the basic needs of the population or to satisfying the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear (see General Survey, op. cit., paragraph 161). The Committee considers that the requirement of 50 per cent of the personnel to provide these minimum services in the event of a strike in the transport sector is not compatible with the principles of freedom of association.

Furthermore, the Committee once again recalls that "sanctions for strike action should be possible *only* where the prohibitions in question are in conformity with the principles of freedom of association" (see General Survey, *op. cit.*, paragraph 177).

VII. Legislation restricting the activities of employers' and workers' organizations

Closure of enterprises, establishments or businesses affected by a strike, in accordance with sections 493(1) and 497 of the Labour Code

The Committee notes the information provided by the Government in its report to the effect that a process of tripartite consultation has been initiated with all the organizations of employers and workers concerning the recommendations of the Committee on Freedom of Association. The Committee of Experts recalls that, in the event of a lawful strike, these provisions go beyond the protection of the exercise of the right to strike and may infringe the freedom to work of strikers, while disregarding the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of employers and managerial staff to enter the installations of the enterprise and to exercise their activities). In these conditions, in the same way as the Committee on Freedom of Association, the Committee of Experts expresses the firm hope that the Government will take the necessary measures to repeal sections 493(1) and 497 of the Labour Code.

VIII. Possibility for workers to submit collective disputes unilaterally to arbitration (section 452(2) of the Labour Code)

The Committee recalls that recourse to compulsory arbitration at the request of one of the parties would only be admissible as a compensatory guarantee in essential services in the strict sense of the term. The Committee recalls that arbitration imposed at the request of one party is generally contrary to the principle of voluntary bargaining and thus the autonomy of bargaining partners. An exception might, however, be made in the case of provisions which, for instance, allow workers' organizations to initiate such a procedure on their own, for the conclusion of a first collective agreement (see General Survey, *op. cit.*, paragraph 257).

In this regard, the Committee requests the Government to take appropriate measures to amend the second paragraph of section 452 of the Labour Code within the meaning of the principle expressed above.

IX. Payment of wages due in respect of strike days and penalization for withdrawal from conciliation by one of the parties and failure to reply to a statement of claims

In this regard, the Committee notes the conclusions and recommendations in which the Committee on Freedom of Association in November 1999 (Case No. 1931) requested the Government to envisage amending the legislation in such a way that: (1) the payment of wages in respect of strike days is not mandatory but a matter for resolution by the parties; (2) the withdrawal by one of the parties from the conciliation procedure does not

give rise to disproportionate penalties; and (3) that failure to reply to a statement of claims does not entail disproportionate penalties.

The Committee reminds the Government that, if it so wishes, it may have recourse to the technical assistance of the ILO to bring its legislation into conformity with the Convention. It also requests the Government to provide information in its next report of any progress achieved in this respect.

Paraguay (ratification: 1962)

The Committee notes the Government's report. The Committee also notes that at the Government's request a technical assistance mission visited Paraguay from 11 to 13 October 2000.

The Committee recalls that the divergencies between the provisions of the national legislation and the guarantees set forth in the Convention related to:

the requirement of too high a number of workers (300) to establish a branch trade union (section 292 of the Labour Code);

the imposition of excessive requirements to be able to hold office in the executive body of a trade union (sections 298(a) and 293(d) of the Labour Code);

the submission of collective disputes to compulsory arbitration (sections 284 to 320 of the Code of Labour Procedure);

the restriction on workers, even if they have more than one part-time employment contract, from being able to join more than one union, either at the enterprise, industry, occupation or trade, or institutional level (section 293(c) of the Labour Code);

the requirement that trade unions must comply with all requests for consultations or reports from the labour authorities (sections 290(f) and 304(c) of the Labour Code);

the requirement that, for a strike to be called, its sole purpose must be the direct and exclusive protection of the workers' occupational interests (sections 358 and 376(a) of the Labour Code); and the obligation to ensure a minimum service in the event of a strike in public services which are essential to the community, without consulting the workers' and employers' organizations concerned (section 362 of the Labour Code).

The Committee notes with interest that the representatives of the Government and the technical assistance mission prepared a draft Bill to amend or repeal the legislative provisions criticized by the Committee and that the representatives of the most representative organizations of workers are in agreement with the proposed changes. In practical terms, the provisions of the draft Bill:

- (1) reduce from 300 to 50 the minimum number of workers to establish a branch trade union (section 292 of the Labour Code);
- (2) allow workers engaged in more than one occupation in various enterprises or sectors to join the trade unions corresponding to each of the categories of work that they perform and, at the same time, if they so wish, to join an enterprise union and a sectoral union (section 293(c) of the Labour Code);

- (3) to be a member of the executive body of a trade union, it is necessary to be an active member of the union, unless the statutes allow other categories of members, and the executive officers of the trade union are to be removed by decision of the general assembly, in accordance with the statutes of the trade union (sections 293(d) and 298(a) of the Labour Code);
- (4) trade unions will be obliged to comply with all requests for consultations or reports addressed to them by the competent labour authorities only in respect of their annual financial statements, as well as with requests for reports by the labour authorities in the event of denunciations by members concerning violations of the law or of the trade union's statutes – the representatives of the central trade unions: Single Confederation of Workers (CUT), Central Paraguayan of Workers (CPT), General Confederation of Labour (CGT) and Trade Union Confederation of State Workers of Paraguay (CESITIP) expressed a preference for establishing the sole possibility of requesting reports in the event of denunciations by members (section 290(f) and section 304(c) of the Labour Code);
- (5) trade unions are prohibited from being involved in matters relating purely to party politics and electoral movements which are unrelated to furthering and defending the interests of the workers, as well as in religious matters (section 305(a) of the Labour Code);
- (6) a strike is defined as the temporary collective and concerted suspension of work, at the initiative of the workers and their organizations, to defend the interests of the workers, as set out in section 283 of the Code (the examination, defence, furtherance and protection of occupational interests, as well as the social, economic, cultural and moral improvement of members) (section 358 of the Labour Code);
- (7) at the end of section 362 of the Labour Code, a provision is added that, in the absence of agreement, the modalities for the provision of minimum services in the event of a strike and the number of workers who are to ensure such services shall be determined by the Ministry of Labour with the participation of the workers' and employers' organizations from the sector, with administrative decisions which are deemed to be excessive being subject to judicial review; furthermore, where the State is a party to the dispute, minimum services shall be determined by the judicial authority; and
- (8) sections 284 to 320 of the Code of Labour Procedure respecting the submission of collective disputes to compulsory arbitration are repealed (the provisions in question are not currently applied on the grounds that article 97 of the national Constitution only provides for voluntary arbitration).

The Committee hopes that the draft text in question will be submitted to the legislative authority in the near future. The Committee requests the Government to provide information on any developments in this respect, and on the outcome of the meeting which it was agreed to hold in a Protocol of Agreement signed during the technical assistance mission between the Government and the social partners, in which an undertaking was given to meet in order to examine the possible amendments to the legislation to bring it into conformity with the provisions of the Convention.

Furthermore, the Committee is addressing a request directly to the Government in relation to the observations made by the CGT, the CUT and the CESITEP objecting to draft legislation respecting the public service which, in their view, is not compatible with the guarantees set out in the Convention. The Committee also examines in the direct request an issue relating to the electoral procedure which has to be followed by trade unions.

Finally, the Committee notes that the technical assistance mission also dealt with matters raised in relation to its examination of the application of Convention No. 98. The Committee proposes to address these issues during its regular examination of the application of Convention No. 98 next year.

[The Government is asked to report in detail in 2001.]

Peru (ratification: 1960)

The Committee recalls that its previous comments referred to various provisions of the Industrial Relations Act of 1992 and its Regulations, which are in breach of the guarantees provided under the Convention, namely:

- (1) the denial of trade union membership during the probation period (section 12(c) of the Act);
- (2) the requirement of a high number of workers (100) to form trade unions by branch of activity, occupation and for various occupations (section 14);
- (3) the requirement that workers must be active members of the trade union (section 24(b)) and must have been in the service of the enterprise for a minimum of one year (section 24(c)) to become eligible for trade union office (section 24);
- (4) the prohibition of political activities for trade unions (section 11(a));
- (5) the excessive restrictions on the right of workers to call a strike, in particular sections 73(a) and (b), 67 and 83(g) and (j);
- (6) the obligation of trade unions to compile reports which may be requested by the labour authorities (section 10(f));
- (7) the power of the labour authority to cancel the registration of a trade union (section 20 of the Act) and the requirement that the trade union must wait six months after the cause of cancellation has been remedied before reapplying for registration (section 24 of the Regulations);
- (8) the prohibition of federations and confederations of the public services to form part of organizations which represent other categories of workers (section 19 of the Presidential Decree No. 003-82-PCM);
- (9) the power of the labour administration to establish minimum services in cases of disputes, when a strike is declared in essential public services (section 83 of the Act in force).

The Committee notes the information supplied by the Government in its last report, that a draft Act No. 00996 on Industrial Relations of 31 July 2000, had been presented. According to the Government, this draft includes the main observations made by the ILO concerning previous drafts, and covers most of the aspects indicated above, as follows:

- (1) suppression of the requirement to complete a probation period in order to become a member of a trade union organization (section 8);
- (2) reduction of the number of workers from 100 to 50 to form trade unions by branch of activity, occupation and for various occupations (section 7);
- (3) remove the requirements for eligibility for trade union office, indicated in section 24 of the Act in force, thus allowing the statute to determine the form, management and mandate of such office (section 19);
- (4) guarantee the exercise of the freedoms recognized by the Constitution in this connection, namely exercise of political activities (section 12(a));
- (5) remove the obligation of trade unions to compile reports which may be requested by the labour authorities and other governmental authorities (section 13);
- (6) provide that cancellation of the registration of a trade union shall only be possible by legal action (section 27(e)); and
- (7) allow workers the opportunity of recourse to the labour judge (section 78(3)) in cases of disagreement with the employers regarding the number and occupation of workers required to maintain minimum services.

The Committee hopes that this draft will be approved in the near future and requests the Government to indicate in its next report all progress made in this connection.

However, the Committee observes that the new draft does not take into account certain of its previous comments and that it contains provisions which could cause problems regarding the implementation of the Convention, as follows.

restrictions to the exercise of the right to strike requiring that *the decision be adopted by an absolute majority of the workers* (section 73(b)(i)), in particular the obligation that the announcement of a strike *shall be communicated to the employer and to the Labour Administration accompanied by a copy of the voting rule with the names and signatures of participating workers* (section 73(c)). Nor is the right of workers not to strike covered, since *the decision adopted by vote – when all workers are called, whether trade union members or not, and included in the range of the conflict, the decision adopted by absolute majority shall be binding to all* (section 73(b)(i)); and

the prohibition of federations or confederations of public servants to become members of confederations which also include private sector organizations (see paragraph 193 of the General Survey on freedom of association and collective bargaining, 1994).

The Committee further notes that in order to establish federations and confederations the draft requires an excessively high number of unions (a minimum of five unions from the same branch of economic activity) and of federations (a minimum of ten), respectively (section 10).

The Committee also understands that the draft does not expressly recognize the right to strike of trade union federations and confederations (see General Survey, op. cit., 1994, paragraph 69). It therefore proposes that care should be taken accordingly in this section.

The Committee firmly hopes that draft Act No. 0096 will be adopted as soon as possible, taking account of all the comments it has so far expressed in this connection. It requests the Government to indicate in its next report all progress made in this regard and to supply a copy of the new version of the Act.

Moreover, the Committee is addressing a request directly to the Government.

Philippines (ratification: 1953)

The Committee notes the Government's report and recalls its previous observations regarding the discrepancies between the national legislation and the requirements of the Convention, which are as follows.

Articles 2 and 3 of the Convention

The need to review the requirement that at least 20 per cent of workers in a bargaining unit are members of a union (section 234(c) of the Labour Code).

The requirement of too high a number of unions (ten) to establish a federation or a national union (section 237(a)).

The prohibition of aliens, other than those with valid permits, if the same rights are guaranteed to Filipino workers in the country of the alien workers, for engaging in any trade union activity (section 269) under the penalty of deportation (section 272(b)), and the provisions of the Department Order No. 9 amending the rules implementing Book V of the Labour Code, which confirms such restrictions.

Article 3

The need to render more flexible Rule 11(3)(f) of Book V implementing the Labour Code which provides that officers of a union operating in an enterprise must be employed in that enterprise.

The need to amend section 263(g) of the Labour Code which allows the Secretary of Labour and Employment to submit a dispute causing or likely to cause a strike or lockout in "an industry indispensable to the national interest" to compulsory arbitration, thus bringing an end to a strike or in an acute national crisis, and which empowers the President to determine the industries indispensable to the national interest.

The following provisions which provide disproportionate sanctions for participation in an illegal strike: the dismissal of trade union officers and the penal liability to a maximum of three years (sections 264(a) and 272(a) of the Labour Code) and the penalty of reclusion perpetua to death for organizers or leaders of any meeting held for propaganda purposes against the Government, the word "meeting" being understood to include picketing of labour groups (section 146 of the revised Penal Code).

While the Government practically reiterates the same arguments it has been making for many years in respect of the abovementioned discrepancies, the Committee further notes the Government's reference to the ongoing comprehensive review of the Labour Code for which a Congressional Commission on Labour has been formed.

The Committee therefore refers to its previous detailed observations and urges the Government to amend its legislation on the abovementioned points upon which it has been commenting for many years.

[The Government is asked to report in detail in 2001.]

Poland (ratification: 1957)

The Committee notes the information supplied by the Government in its report. It also takes note of the comments submitted by the Trade Union of Medical Analysts and Technicians and the National Trade Union of Nurses and Midwives.

1. *Articles 2 and 3 of the Convention: Right of workers without distinction whatsoever to establish and join organizations.* (a) With reference to its previous comments concerning the right to organize of public employees, the Committee notes the adoption in 1998 of a new law on civil service, which replaces the previous legislation on this subject. It notes that, according to the Government, the new legislation does not provide for any prohibition of association in the civil corps. The Committee notes however that the Civil Service corps now comprises two categories of employees: "Civil Service employees ... employed on the basis of an employment contract" (article 3.1) and "Civil servants ... employed by virtue of nomination" (article 3.2), with different rights.

- (i) article 69(2) of the Civil Service Act provides that Civil Service corps members are not allowed to publicly manifest their political beliefs. The Committee recalls that trade union activities cannot be restricted solely to occupational matters, since a government's choice of a general policy may have an impact on workers in both the private and public sectors, and that public servants in the exercise of their trade union activities should be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy;
- (ii) article 69(3) provides that "Civil Service corps members are not allowed to participate in strikes or actions of protest, which will interfere with the normal functioning of the office". The Committee recalls that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State and that, in borderline cases, one solution might be to provide for the maintaining by a defined and limited category of staff of a negotiated minimum service when a *total and prolonged* stoppage might result in *serious* consequences for the public;
- (iii) article 69(4) provides that "Civil servants are not allowed to perform functions within trade unions". The Committee recalls that the autonomy of organizations can only be effectively guaranteed if their members have the right to elect their representatives in full freedom, which does not appear to be the case under this provision.

The Committee requests the Government to amend these provisions with a view to bringing the legislation into full conformity with the Convention, and to provide information in its next report on progress in this respect. The Committee further requests the Government to provide in its next report information on the application in practice of this new legislation, including judicial decisions, if any.

(b) The Committee notes the entry into force of the Act of 24 July 1999 concerning the customs service which provides in article 48 that customs officers may associate in trade unions, and requests the Government to send a copy of this legislation.

(c) The Committee notes the comments made by the Trade Union of Medical Analysts and Technicians and the National Trade Union of Nurses and Midwives, regarding the obligation imposed upon employees of the public health care system, under threat of redundancy, to change conditions of employment from full employment in relation to the civil law regime, which allegedly aims at the reduction of its members and eventual liquidation of the organizations. The Committee requests the Government to provide in its next report information concerning the right of these employees to establish and join organizations of their own choosing.

2. *Trade union assets.* Referring to the need to amend the Act of 25 October 1990 concerning the restitution of trade union assets, the Committee notes the Government's statement that the Social Revendication Commission is competent in this domain, but is bound to observe that no material progress has been made as regards the draft amendments which were to be examined by the Council of Ministers in the autumn of 1998. The Committee, once again, expresses the hope that these issues will be resolved in the very near future; it requests the Government to keep it informed of any developments in this matter and to provide a copy of the relevant text as soon as it is adopted.

3. *Articles 3, 5 and 6. Representativeness of trade union organizations.* Referring to the need to amend the provisions of trade union legislation on the representative nature of trade union organizations, the Committee notes that two draft pieces of legislation are currently being debated in Parliament: the Act concerning the change of the Labour Code and the change of some Acts, which introduces the criteria of representativeness in social dialogue and collective bargaining at an enterprise level, and eliminates any doubts concerning representativeness at the supra-enterprise level; and the Act concerning the Commission for Socio-Economic Issues, which provides for criteria of representativeness for organizations of social partners in social dialogue at the national level. The Committee requests the Government to inform it in its next report of progress made in this regard and to provide it with a copy of these Acts as soon as they are adopted.

Portugal (ratification: 1977)

The Committee notes the information provided by the Government in its report and recalls that its previous comments concerned the following provisions:

section 8(2) and (3) of Legislative Decree No. 215 B/75, which requires 10 per cent, or 2,000 of the workers concerned, to establish a trade union, and one-third of the trade unions in a region or category to establish a federation; and

section 7(2) and (3) of Legislative Decree No. 215 C/75, which requires one-quarter of the employers concerned and up to 20 individuals in order to establish an employers' organization, and a minimum of 30 per cent of employers' associations to establish a group or federation.

The Committee notes that the Government confines itself to repeating the information which it had provided previously, to the effect that the above provisions

have not been applied since the Legal Advisor of the Attorney-General of the Republic ruled that they were contrary to the Constitution and to certain international instruments respecting freedom of association. The Committee notes the Government's statement that the revision of the trade union legislation is not a priority and that, since neither the General Confederation of Portuguese Workers (CGTP), nor the Confederation of Portuguese Industry (CIP), nor the Attorney-General see any impediment to the establishment of workers' and employers' associations, it has not amended its labour legislation for the time being.

While noting this information, the Committee emphasizes the importance that it attaches to the observance of the rights of workers and employers, without distinction whatsoever, with the only possible exception of the armed forces and the police, to establish organizations of their own choosing for the defence of their interests, including outside existing trade union structures. The Committee therefore once again expresses the firm hope that the provisions in question will be explicitly repealed from the trade union legislation and requests the Government to keep it informed in this respect.

Romania (ratification: 1957)

The Committee notes the information contained in the Government's report, particularly in relation to the new Act on the settlement of labour disputes, which came into force in January 2000 (Act No. 168), the observations made by the National Trade Union Bloc and the reports of the Committee on Freedom of Association on Cases Nos. 1891 and 2057 (320th Report of the Committee on Freedom of Association, March 2000).

The Committee notes with satisfaction that the new legislation introduces provisions which respond to several of the concerns expressed in its previous comments on the previous legislation, and particularly:

- the compulsory arbitration procedure which could, in certain cases be set in motion at the sole initiative of the Minister of Labour (the procedure is modified by section 41(2) and the related provisions of the new Act, under which mediation and arbitration in disputes of interest are henceforth compulsory only where the parties so decide by consensus);

- the power conferred upon the Supreme Court to suspend, under certain circumstances, the start or continuation of a strike for a period of 90 days (this provision is repealed by section 91 of Act No. 168);

- the heavy penalties, financial responsibility and ineligibility for trade union office to which persons are liable who have called a strike without observing certain conditions, which are in themselves contrary to the Convention, but which were set out in the law (these provisions are repealed by section 91 of Act No. 168);

- the excessive period of employment at the workplace as a prerequisite for eligibility to trade union office (no provision of this type in Act No. 168).

The Committee also notes with interest that the new Act clarifies the distinction between disputes of rights and disputes of interest, introduces new provisions on sympathy strikes (sections 43-45) and the maintenance of essential services in the event of a strike (section 66). However, it wishes to make the following comments on certain provisions of Acts Nos. 54 and 168.

Article 3 of the Convention. Right of workers' organizations to elect their representatives in full freedom. Section 9 of Act No. 54 provides that, to be elected to executive office in a trade union, a person must be a citizen of Romania, a member of the trade union, employed at the workplace and not have been convicted. The Committee emphasizes that these conditions of eligibility are not in conformity with the Convention:

with regard to the requirement of Romanian nationality, the Committee recalls that provisions on nationality which are too strict could deprive workers of the right to elect their representatives in full freedom and that the legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (1994 General Survey on freedom of association and collective bargaining, paragraph 118);

with regard to the requirements of membership of the trade union and employment at the workplace, the Committee recalls that provisions requiring all candidates for trade union office to be from the same workplace, or those requiring them to be members of the trade union, are liable to infringe the organization's right to elect representatives in full freedom when they are unable to provide enough qualified persons from among their own ranks (see General Survey, op. cit., paragraph 117);

with regard to previous convictions, the Committee recalls that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties should not constitute grounds for disqualification from trade union office (see General Survey, op. cit., paragraph 120).

Article 2. Right of workers to join organizations of their own choosing. Section 2 of Act No. 54 provides that the same person may only belong to a single trade union. In the Committee's opinion, it would be desirable for workers exercising more than one occupational activity in different occupations or sectors to have the possibility of joining the corresponding trade unions.

Article 3. Right of workers' organizations to organize their administration and activities and to formulate their programmes freely. (i) Section 55 of Act No. 168 provides that the management of a production unit may demand the suspension of a strike, for a maximum period of 30 days, if it endangers the life or health of individuals, and that an irrevocable decision may be taken in this respect by the Court of Appeal under the terms of section 56. The Committee requests the Government to specify the criteria relating to "the life or health of individuals" by providing, where possible, practical examples of court decisions applying this provision. (ii) Section 62(1) of Act No. 168 provides that the management of a production unit may submit a dispute to an arbitration commission where a strike has lasted for 20 days without agreement and its continuation is such as to affect interests of a humanitarian nature. Emphasizing that it should not be up to the management of the production units to evaluate whether the continuation of a strike is such as to affect interests of a humanitarian nature, the Committee requests the Government to specify the concept "interests of a humanitarian nature" by providing, where possible, examples of the application of this provision in practice.

Furthermore, the Committee notes from the Government's report that the new Bill respecting employers' organizations (which are currently governed by Ordinance No. 26/2000) is under examination by the competent senatorial commission. The Committee

trusts that progress will be achieved in the near future in this respect and requests the Government to provide the text of the Act once it has been adopted.

The Committee requests the Government to take the appropriate measures to bring its legislation into full conformity with the Convention, to keep it informed of the measures which have been taken or are envisaged in this respect and to provide information in future reports on the application of the legislation in practice.

Russian Federation (ratification: 1956)

The Committee notes the information provided in the Government's report.

Article 2 of the Convention. In its previous comments, the Committee had noted the Government's indication that the provision of the Labour Code, as amended in 1992, which appeared to maintain trade union monopolies at the enterprise level (section 230) had not been included in the draft Labour Code under preparation. The Committee notes from the Government's latest report that the draft Labour Code is under the consideration of the State Duma and that the text will be sent to the Office after its adoption. The Committee recalls that section 230 refers to the rights of the trade union committee elected at the enterprise or workplace and thus leaves doubt about the possibility of more than one union existing at the same time in the same enterprise. The Committee trusts that this ambiguity will not be retained in the new Code and requests the Government to transmit a copy of the new Code as soon as it is adopted.

Article 3. Referring to its earlier comments concerning the obligation to declare the duration of a strike under section 14(5) of the 1995 Act on procedures for the resolution of collective labour disputes, the Committee had noted the Government's previous indication that workers who did not cease strike action on the day after the notified date on which the strike is to end may be subjected to disciplinary penalties under the Labour Code, including rebukes, reprimands or, as a last resort, dismissal. In its latest report, the Government indicates that, in accordance with sections 18 and 22 of the Act on procedures for the resolution of collective labour disputes, disciplinary punishment due to strike action may only be imposed in the event of non-compliance with a court order. The Committee further notes however that section 17 of the Act establishes that a strike is illegal if it was declared without regard for the time frames, procedures and requirements stipulated by the sections of the Act, including section 14. The Committee considers that forcing the employees and their organizations to specify the length of a strike would restrict the right of workers' organizations to organize their administration and activities and to formulate their programmes. The right to strike is effectively, by definition, a means of applying pressure which the workers and their organizations may use to promote and defend their social and economic interests and achieve satisfaction in their claims. The Committee therefore requests the Government to eliminate the obligation to notify the duration of the strike, and asks it to include details in its next report on the measures effectively taken in this connection.

Finally, the Committee notes the Government's indication that, in its opinion, the Act on the procedure of the settlement of collective labour disputes sets out a clear-cut definition of the terms and conditions under which strike action is not available. The Committee considers however that the numerous requirements set out, in particular in sections 14 and 16 of the Act, concerning the declaration of a strike and the course of action during a strike could easily render strikes illegal on the basis of minor procedural

flaws. The Committee notes, for example, that the failure to provide a minimum service may result in a strike being declared illegal under the Act, while the determination of the minimum to be provided will be made by the executive body or body of local self-government in cases where the parties have not been able to agree. In cases of disagreement concerning minimum services, however, the Committee considers that it is preferable for such disagreements to be resolved by an independent body. These and other requirements give rise to a rather complex and complicated procedure for the exercise of legal strike action that may place unnecessary obstacles to its exercise in practice. The Committee would therefore request the Government to consider reviewing and simplifying the Act so as to ensure that the requirements for undertaking legal strike action do not effectively hinder the right of workers' organizations to organize their activities. Furthermore, it requests the Government to transmit copies of any recent relevant court judgements concerning the legality of strike action.

Rwanda (ratification: 1988)

The Committee takes note of the Government's report and of the comments submitted by the Confederation of Trade Unions of Rwanda (CESTRAR) and requests the Government to comment on these in its next report. The Committee recalls its previous observations on the incompatibility between certain provisions of the national legislation and the Convention.

Article 2 of the Convention (the right of workers, without distinction whatsoever, to establish organizations of their own choosing)

Agricultural workers

Section 186 of the 1967 Labour Code excludes agricultural workers from the scope of the Labour Code and therefore from the protection guaranteed by the Convention of the right to organize and bargain collectively in respect of employment conditions. The Committee recalls that it has been requesting the Government to include these workers in the Labour Code since 1969 in the framework of the application of Convention No. 11, in order for them to enjoy the same rights as industrial workers. The Committee urges the Government to grant agricultural workers the right to organize in the defence of their occupational interests.

Public servants

The Committee also notes the comments of CESTRAR regarding the application of the Convention and in particular the allegation that section 84 of the draft Act on public service envisages a prohibition on state employees from publicly expressing their political, philosophical, religious or trade union opinions. CESTRAR considers that this provision is tantamount to prohibiting public servants from organizing. The Committee believes that freedom of expression is an essential element of freedom of association. The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications, and in the course of their other activities (see General Survey on freedom of association and collective bargaining, 1994,

paragraph 38). Moreover, public servants must benefit, as do other workers, from the civil and political rights which are essential to the normal exercise of freedom of association, subject only to obligations devolving from their status and the nature of the functions they perform. The Committee therefore requests the Government to remove the prohibition of the freedom of expression of trade unions from section 84 of the draft Act on public service.

Articles 3 and 10 (the right of the organizations of public servants not exercising authority in the name of the State to formulate their programmes in the defence of the occupational interests of their members, including recourse to collective action and to strikes). Section 26 of the Legislative Decree of 19 March 1974 on the general conditions of service of employees of the State forbids state employees to take part in strikes or in activities aimed at causing a strike in the state services. According to information supplied by the Government in its reports, the review of the general conditions of service of state employees was under examination by the technical services of the Ministry for Labour and the Public Service. This review included amending section 26. The Committee recalls that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State. In its latest report, the Government indicated that section 73 of the draft Act on the review of the general status of civil servants provides that civil servants have the rights and liberties recognized to citizens by the Constitution. It again requests the Government to transmit, in its next report, the text of the draft amendment to section 26.

Article 3 of the Convention (the right of workers' organizations to elect their representatives in full freedom). Section 8(b) of the 1967 Labour Code provides that only nationals may be elected as members responsible for the management and administration of a workers' organization. However, the Committee considers that national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 63 and 118). The Committee notes that the Government reiterates its earlier comments that the draft Labour Code, under examination, should amend the provisions of section 8. Section 67(2) of the draft indeed provides that foreign workers may be elected to trade union office after a period of residence of at least five years in the country, subject to their number not exceeding one-third of the members of the organization's management and administration committee. The Committee firmly hopes that this amendment will be adopted very shortly.

Legislation envisaged regarding restrictions to the right to strike

The Committee recalls that section 272 of the draft Labour Code which restricts the right to strike of workers occupying posts essential for the physical safety of persons, for the conservation of installations and for ensuring the functioning of the country's vital socio-economic sectors, has too wide a scope to be compatible with the Convention. Noting that the Government indicates in its report that this text is dictated by the concern to maintain essential services, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population and that this will be confirmed by the application of section 272, the Committee

nevertheless insists that the Government modify the text of section 272 of the draft Labour Code, using the precise terms mentioned in its report.

The Committee requests the Government to communicate information in its next report on all progress achieved in this respect.

[The Government is asked to report in detail in 2001.]

Sao Tome and Principe (ratification: 1992)

The Committee notes with regret that, for the third year in succession, the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comments, which dealt with the following:

1. *Article 2 of the Convention.* With regard to public employees, the Committee asks the Government to state whether this category of workers has the right to organize and to indicate the applicable legislation.

2. *Articles 3 and 10 (right of workers' organizations to formulate their programmes to promote and protect workers' interests without interference from the public authorities).* The Committee points out that it has always been of the opinion that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests (see General Survey on freedom of association and collective bargaining, 1994, paragraph 147).

Majority for calling a strike. The Committee notes that section 4 of Act No. 4/92 establishes that decisions on the calling of strikes must be adopted by a two-thirds majority of the workers present at the general assembly convened for the purpose. The Committee considers that the requirement of two-thirds of the workers is high and could be an obstacle to the exercise of the right to strike and that it would therefore be appropriate for the decision to be taken by a simple majority of the workers present at the assembly.

Minimum services. The Committee also notes that paragraph 4 of section 10 of Act No. 4/92 establishes that employers determine the minimum services after consulting the workers' representative. In the Committee's view, it would be more appropriate to provide that in the event of disagreement in determining such services, the matter should be settled by an independent body.

The Committee further notes that under paragraph 2 of section 9 of the Act, the Ministry in charge of labour administration may authorize the enterprise to hire workers to perform essential services, in order to maintain the economic and financial viability of the enterprise should it be seriously threatened by the strike. Bearing in mind that the application of this provision could restrict the effectiveness of the strike as a means of pressure, the Committee considers that, in such cases, rather than authorizing the enterprise to hire workers to perform essential services, minimum services could be determined by negotiation in which the workers would participate along with the enterprise.

Essential services and compulsory arbitration. The Committee notes that, under section 11 of Act No. 4/92, compulsory arbitration applies to the essential services set out in section 10, which include postal services (c) and banking and loans (j), which are not essential services in the strict sense as explained by the Committee (services whose interruption might endanger the life, personal safety or health of the whole or part of the population) (see General Survey, *op. cit.*, paragraph 159). The Committee therefore asks the Government to take the necessary steps to ensure that workers in the postal, banking and loans services may exercise the right to strike.

Grounds for strike. Lastly, the Committee notes that, under section 1 of Act No. 492, the sole purpose of strikes is to safeguard the legitimate occupational and social interests of workers and the interests of the national economy. In the view of the Committee, organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living (see General Survey, *op. cit.*, paragraph 165).

The Committee asks the Government to state whether strikes are allowed as a means of seeking solutions to economic and social policy questions which are of direct concern to the worker.

Article 6. The Committee asks the Government to state whether the right to strike also applies to federations and confederations.

The Committee hopes that in its next report the Government will provide information on the questions it has raised.

Senegal (ratification: 1960)

The Committee notes the information contained in the Government's report.

The Committee recalls that its previous comments concerned the discrepancies which exist between the national legislation and the guarantees set out in the Convention, namely:

- legal restrictions on the right of young persons to join a trade union;
- legal restrictions on the establishment of organizations without previous authorization;
- the broad powers conferred upon the authorities to requisition workers who are on strike outside the essential services in the strict sense of the term; and
- the power of the public authorities to dissolve trade unions by administrative authority.

1. *Trade union rights of young persons.* The Committee emphasizes once again that section L.11 of the Labour Code (as amended in 1997) provides that young persons aged over 16 years may join trade unions, unless their membership is opposed by their father, mother or guardian.

While noting that, according to the Government, this provision corresponds to a duty of the family to protect the interests of the child, the Committee observes that the Convention does not authorize any distinction based on these grounds (see the General Survey on freedom of association and collective bargaining, 1994, paragraph 64). It takes due note of the information provided by the Government in its report to the effect that it is prepared to amend the legislation but that, to do so, it must await the completion of the deliberations of the working groups entrusted with the preparation of the legal texts to be issued under the Labour Code. The Committee requests the Government to amend the legislation as soon as possible in order to bring it into conformity with the Convention.

2. *Articles 2, 5 and 6 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization.* The Committee recalls the need to repeal Act No. 76-28 of 6 April 1976, which confers discretionary

powers on the Minister of the Interior with regard to issuing a receipt recognizing the existence of a trade union.

The Committee emphasizes with regret that section L.8 of the Labour Code, as amended in 1997, reproduces the substance of the provisions of the Act of 1976 requiring previous authorization from the Minister of the Interior for the establishment of trade unions, federations and confederations. The Committee emphasizes the importance that it attaches to compliance with *Articles 2, 5 and 6* of the Convention, which guarantee workers and workers' organizations the right to establish organizations of their own choosing without previous authorization. The Committee notes the information provided by the Government in its report to the effect that it is prepared to amend the legislation after the completion of the deliberations of the working groups entrusted with preparing the texts to be issued under the Labour Code. It once again requests the Government to repeal as soon as possible the requirement for previous authorization contained in section L.8 of the Labour Code and to inform it of all measures taken to this effect.

3. *Requisitioning.* The Committee notes once again that section L.276 grants the administrative authorities broad powers to requisition workers from private enterprises and public services and establishments who occupy posts considered essential for the safety of persons and goods, the maintenance of public order, the continuity of public services or meeting the country's essential needs.

Noting that, according to the Government, the power of requisition makes it possible in cases of overriding necessity to ensure the functioning of essential services and the safety of persons and goods, the Committee once again requests the Government to provide a copy of the decree made under section L.26 containing the list of essential services so that it can ensure that it is compatible with the principles of freedom of association. The Committee recalls once again that the requisitioning of workers as a means of settling labour disputes could involve abuses. Such action is to be avoided except where, in particularly serious circumstances, essential services have to be maintained. In the opinion of the Committee, requisitioning may be justified only in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis. It notes that the Government is prepared to amend the legislation after the completion of the deliberations of the working groups entrusted with preparing the texts to give effect to the Labour Code. The Committee requests the Government to take the necessary measures in the near future to ensure that its legislation is in full conformity with the Convention.

The Committee also recalls that section L.276 *in fine* provides that workplaces or the immediate surroundings thereof may not be occupied during a strike, under penalty of the sanctions provided for in sections L.275 and L.279. The Committee has already indicated to the Government that restrictions on workplace occupations should be limited to cases where the action ceases to be peaceful (see the General Survey, *op. cit.*, paragraph 174).

4. *Article 4. Dissolution by administrative authority.* The Committee recalls the need to amend the national legislation with a view to protecting trade union organizations against dissolution by administrative authority (Act No. 65-40 of 22 May 1965), in accordance with *Article 4* of the Convention.

The Committee had noted that section L.287 of the Labour Code of 1997 did not explicitly repeal the provisions respecting administrative dissolution contained in the 1965 legislation. The Committee reminded the Government that it would be preferable to incorporate in a law or regulations a provision explicitly stating that the measures respecting administrative dissolution contained in Act No. 65-40 respecting associations do not apply to trade union organizations. The Committee notes that the Government is prepared to amend the legislation, but that it must await the completion of the deliberations of the working groups entrusted with the preparation of texts to be issued under the Labour Code before amendments can be made to the labour legislation. The Committee hopes that measures will be taken in the near future and it requests the Government to include in its next report any information on practical measures taken to this effect.

The Committee once again expresses the firm hope that the Government will take all the necessary measures in the near future in the light of the above comments to bring its legislation into conformity with the Convention. It requests the Government to keep it informed in its next report of any progress achieved in this regard and to provide copies of any amendments made to the legislation and full particulars on its application in practice.

Seychelles (ratification, 1978)

The Committee takes note of the Government's report. The Committee recalls that its previous comments concerned the following discrepancies between the national legislation and the guarantees provided for in the Convention:

Articles 2 and 3 of the Convention: Legislative restrictions on the right of workers to establish organizations of their own choosing without previous authorization, and on the right of workers' organizations to formulate their programme of action to further and defend the professional interests of their members without interference by the public authorities. The Committee had noted that the conditions set out in section 9(1)(b) of the Industrial Relations Act of 1993, for the compulsory registration of trade unions, confer on the Registrar a discretionary power to refuse registration. In its latest report, the Government indicates that the public authorities are not at all involved in the drafting of the workers' organization's constitution and their rules and pointed out that the Registrar may refuse to register a trade union under section 9(1)(f) of the Act if its constitution does not contain adequate provision, or it is not organized to provide adequately, for the protection and promotion of the interests of its members in every trade which it purports to represent. While taking note of this information, the Committee recalls that workers' organizations have the right to draw up their constitutions and their rules and that public authorities should refrain from any interference which would restrict this right, and thus requests the Government to keep it informed in its next reports of any instance where the Registrar has refused registration under sections 9(1)(b) or 9(1)(f).

With regard to senior public officials, namely those exercising senior managerial or policy-making responsibilities, the Committee had drawn the Government's attention to the fact that these public servants should be entitled to establish their own organizations. In this respect, the Government indicates that all public servants, other than those specified under section 3(2) of the Industrial Relations Act, 1993, are entitled to

establish and join organizations of their own choosing. The Government points out that there is a teachers, medical and other public service employees' union, of which membership is open to senior public officials if they wish to join the union, and that there are currently senior officials who are members of this union. The Committee takes note of this information with interest.

Articles 3 and 10. The right to strike. The Committee recalls that it has been commenting for several years on the following points:

section 52(1)(a)(iv) stipulates that a strike has to be approved by two-thirds of union members present and voting at the meeting called for the purpose of considering the issue;

section 52(4) allows the Minister to declare a strike to be unlawful if he is of the opinion that its continuance would endanger, amongst others, "public order of the national economy";

section 52(1)(b) provides for a cooling-off period of 60 days before a strike may commence; and

certain prohibitions of, or restrictions on, the right to strike, which may or may not be in conformity with the principles of freedom of association, sometimes provide for civil or penal sanctions against strikers and trade unions who have violated these provisions.

The Committee notes that the Government indicates in its latest report that an Employment Task Force has been created in the Ministry of Social Affairs and Manpower Development to consider the issues related to sections 52(1)(a)(iv), 52(1)(b), 52(4) and 56(1)(a) and (b). The matter will thereafter be placed before the social partners and other relevant stakeholders at the National Employment and Labour Council for further discussion. The Committee takes note of this information and requests once again the Government to keep it informed of the measures taken or envisaged to amend sections 52(1)(a)(iv), 52(1)(b), 52(4) and 56(1)(a) and (b) in order to bring its legislation into conformity with the principles of freedom of association.

Slovakia (ratification: 1993)

The Committee notes that the Government's report has not been received.

The Committee wishes to obtain clarification on certain provisions of Act No. 83 of 1990 on citizens' associations, last amended in 1993, and on Act No. 2 of 5 December 1990 on collective bargaining, last amended in 1996.

1. *Article 2 of the Convention, Right of workers without distinction whatsoever to establish and join organizations.* The Committee takes due note of the Government's report which indicates that the right to organize is guaranteed by paragraph 3 of Act No. 83-1990 respecting citizens' associations to everyone, that is to say, to national and foreign workers.

2. *Article 3. Right of workers' organizations to elect their representatives in full freedom.* With regard to the Act respecting citizens' associations, the Committee emphasizes that the General Survey indicates that national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey on freedom of association and

collective bargaining, 1994, paragraph 118). The Committee requests the Government to indicate whether, in addition to its legislation, foreign workers who wish to apply for trade union office may do so at least after a reasonable period of residence in the country.

3. *Article 3. Right of workers' organizations to organize their administration and to formulate their programmes without interference from the public authorities.* The Committee recalls that section 17 of the Act of 1990 respecting collective bargaining, as amended in 1996, requires the vote of half the workers in the enterprise to whom the agreement at enterprise level applies or the vote of half the workers to whom the higher level collective agreement applies to call a strike and emphasizes that the General Survey indicates that, if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast, and that the required quorum is fixed at a reasonable level (see General Survey, *op. cit.*, paragraph 170). The Committee requests the Government to provide information on the measures taken or envisaged to reduce the required majority to hold a strike at least with regard to large bargaining units.

The Committee requests the Government to indicate in its next report the progress achieved in this respect.

Spain (ratification: 1977)

With reference to its previous comments, the Committee expresses the firm hope that the Government will provide information in future reports on the adoption of any legislation respecting the minimum service which has to be maintained in the event of a strike, defined with the participation of workers' organizations.

Sri Lanka (ratification: 1995)

The Committee notes the comments made by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), as well as the Government's reply thereon. In particular, the Committee notes the IUF's contention that the Emergency Regulations recently promulgated by the Government suppress workers' rights under this Convention in services declared to be essential and that the list of essential services includes services which cannot be considered essential in the strict sense of the term. According to the IUF, the denial of workers' rights in these regulations is comprehensive and all encompassing, and far exceeds any measure that could be justified by the emergency situation it purports to address.

The Committee notes the Government's indication that the Emergency Regulations in no way violate or infringe the rights conferred on workers under *Articles 3, 4 and 5 of the Convention*. Furthermore, the Government clarifies that the schedule containing the list of services that could be declared by the President of the country as essential would be declared only as and when such declaration is indispensable. Depending on the services and the necessity to meet the situation, only the services required may be declared essential, thus it would not be possible to visualize the situation prematurely.

The Committee notes that Regulation 2(4) of the Emergency Regulations of 3 May 2000 refers to any order made by the President declaring any service to be of public utility or to be essential for national security or to the life of the community may be made generally for the whole of Sri Lanka or for any area or place specified in the order. Regulation 40, which makes it an offence to fail or refuse to perform work in an essential service, also refers to the necessary presidential order referred to in Regulation 2. The President has similar powers to issue orders under Regulations 10 and 12 relevant to industrial action. These regulations, together with the indication in the Government's reply, would seem to indicate that the list of essential services in the schedule to the regulations provides a list of potential services which may be restricted under the regulations by presidential order. Moreover, the Committee does note that the services listed in the schedule go far beyond the strict sense of the term "essential services" as those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. In addition, there are other important regulations restricting the rights of workers in essential services which do not appear to refer to a pre-established presidential order, such as control of publications (Regulation 14), orders of restriction (Regulation 16), detention of persons (Regulation 17), and distribution of leaflets (Regulation 28). Furthermore, the Committee recalls that the Committee on Freedom of Association was seized in the early 1980s with a number of serious cases of violation of trade union rights and basic civil liberties arising from the application of the Emergency Regulations.

In this respect, the Committee first recalls that the freedom of association Conventions contain no provisions allowing the invocation of a state of emergency to justify exemption from the obligations arising under the Conventions or any suspension of their application. Such a pretext cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity. Furthermore, in cases where the Government has invoked a crisis situation to justify provisions adopted under emergency or exceptional powers, the Committee is of the view that such measures cannot be justified except in a situation of acute national crisis and then only for a limited period and to the extent necessary to meet the requirements of the situation (see 1994 General Survey on freedom of association and collective bargaining, paragraphs 41 and 152). Given the ambiguous nature of some of the regulations referred to above, the Committee requests the Government to take the necessary measures to amend the Emergency Regulations so that they refer only to essential services in the strict sense of the term or cases of acute national crisis. In this regard, the Committee would also invite the Government to give consideration to an earlier statement which it had made in its report due under Convention No. 98 of the possibility of amending the emergency regulations then in force, so as to exempt industrial disputes from their application.

The Committee is raising a certain number of points in a request addressed directly to the Government.

[The Government is asked to report in detail in 2001.]

Swaziland (ratification: 1978)

The Committee notes the information provided in the Government's report, the statement made by the Government representative to the 2000 Conference Committee

and the discussion that followed as well as the recent ILO technical advisory mission to the country (November 2000) during which preliminary draft amendments to the Industrial Relations Act were prepared with the authorities. The Committee also notes the case examined by the Committee on Freedom of Association (Case No. 2019, 321st Report).

The Committee notes with satisfaction that a number of the discrepancies between the legislation and the provisions of the Convention which the Committee had raised previously have been addressed through the adoption of the Industrial Relations Act, 2000 (the Act) which received Royal Assent on 6 June 2000, an earlier draft of which was prepared with ILO technical assistance and in consultation with the social partners. In particular the following issues have been satisfactorily addressed:

- the definition of "employee" no longer excludes casual workers (section 2); these workers are, therefore, no longer excluded from the Act and thus from the rights set out in the Convention;

- workers are no longer obliged to organize within the context of the industry within which they exercise their activity, and the Labour Commissioner is no longer entitled to refuse to register a trade union if he or she is satisfied that an already registered organization is sufficiently representative;

- it appears that imprisonment can no longer be imposed as a sanction for unlawful industrial action or for a federation or any of its officers causing or inciting the cessation or slowdown of work;

- the activities of federations have been expanded to include advice, consultation, collective bargaining, defence and promotion of the collective interests of their members, including matters of public policy and public administration (section 32(2));

- the prohibition of the right to strike in the broadcasting sector has been repealed;

- while the Act continues to provide for a strike to be ended if it is found to threaten the "national interest" (section 89), the definition of "national interest" is in conformity with what the Committee considers to be essential services, that is to say those services the interruption of which has or is likely to have the effect of endangering the life, health or personal safety of the whole or part of the population (section 2);

- the court is no longer empowered to limit the non-occupational activities or wind up an organization or federation because it has devoted more funds and more time to campaigning on issues of public policy or public administration than to protecting the rights and advancing the interests of its members;

- the court is no longer empowered to cancel or suspend registration of an organization taking strike action that is not in conformity with the Act, even for simple procedural violations;

- the obligation to consult the Minister prior to international affiliation has been repealed.

While noting that the Act constitutes a considerable improvement over the previous legislation, the Committee draws the Government's attention to the discrepancies between the Act and the requirements of the Convention noted below.

Article 2 of the Convention. The Committee notes that His Majesty's Correctional Services are specifically excluded from the scope of the Act (section 3). The Committee recalls its comments concerning the 1996 Industrial Relations Act, that pursuant to the Convention, workers without distinction whatsoever should be entitled to form and join organizations of their own choosing, with the possible exception of the police and armed forces. While prison staff may be denied the right to strike, since they are undertaking an essential service, they cannot be denied the right to organize. The Committee requests the Government to provide information as to whether and to what extent prison staff are entitled to organize, and to forward a copy of the relevant legislative text providing therefore.

Right to strike. The Committee notes that a lengthy procedure is required to be followed before strike action can be taken legally (thus constituting a "protected" strike). From the time a dispute is reported to the Labour Commissioner to the time the workers are entitled legally to strike, 70 days will have elapsed. The Committee recalls that the dispute settlement procedure should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness (see General Survey on freedom of association and collective bargaining, 1994, paragraph 171). The Committee requests the Government to inform it of any measures taken or proposed to decrease the length of the compulsory dispute settlement procedures.

The Committee notes that according to the Government's report, section 40 of the Act concerning peaceful protest action, addresses the concerns raised previously by the Committee regarding section 12 of the Decree on the rights of organizations of 1973, and the 1963 Public Order Act. The Committee notes, however, that while the Act now permits peaceful protest action, mandatory prerequisites similar to those required for a strike in furtherance of a trade dispute are set out; it considers that such prerequisites are generally not conducive to the exercise of the right to take protest action. The Committee notes that pursuant to the procedures set out in section 40, 32 days will have elapsed before such action can be taken which the Committee considers would result in protest action becoming impossible in practice or losing its effectiveness. The Committee also considers that the balloting requirements are excessive in the context of protest action, since in the case of national protest action, for example, essentially a national referendum would need to be taken, which could itself give rise to a long and onerous procedure. It should be recalled that the Committee has consistently held that the requirements for a strike ballot should not be such as to render the possibility of exercising the right to strike very difficult, or even impossible in practice (see General Survey, op. cit., paragraph 170). The Committee also notes that section 40(13) appears to open all federations, unions and individuals involved in protest action to civil liability, even if all the prerequisites under the Act are fulfilled. By essentially withdrawing all immunity for civil liability, the Committee is of the view that the right to take protest action to promote socio-economic interests is in practice seriously restricted, since the costs to unions, federations, their affiliates and members could be prohibitive. The Committee expresses the firm hope that the preliminary draft amendment of section 40 prepared in the framework of the technical advisory mission will be adopted without delay in order to bring the legislation into closer conformity with the requirements of the Convention.

The Committee is also addressing a request directly to the Government.

Switzerland (ratification: 1975)

The Committee notes the information provided by the Government in its report and the observations made by the Swiss Federation of Trade Unions, the Swiss Union of Arts and Crafts (USAN) and the Vaud Chamber of Arts and Crafts.

The Committee notes with satisfaction the information provided by the Government in its report to the effect that a new article 28, entitled "freedom of association", has been added to the revised Federal Constitution, which came into force on 1 January 2000. Paragraph 1 of this article explicitly enshrines the right of workers, employers and their organizations to associate in the defence of their interests, establish associations and join them or not, while paragraphs 2 to 4 of article 28 recognize the legality of strikes and lockouts, provided that they are related to industrial relations and are in conformity with the obligations of maintaining labour peace and having recourse to conciliation.

Furthermore, with reference to its previous comments on the need to amend the national legislation (section 23(1) of the Federal Act of 30 June 1927, prohibiting strike action by public servants), in order to ensure that public employees other than those exercising authority in the name of the State, and their organizations, have the right to strike as a means of defending their economic, social and occupational interests, the Committee notes with interest that section 24 of the Act respecting federal employees, which was endorsed by the Federal Chambers on 24 March 2000, provides that the Federal Council may only restrict or prohibit the right to strike where so required by the security of the State, the safeguard of its interests governed by external relations or the guarantee of vital supplies or goods for the country. The Committee notes that, according to the Government, the Act will come into force on 1 July 2002 at the latest.

The Government also states that a draft ordinance respecting federal employees, which is currently being submitted for consultation to the offices, provides that the right to strike is prohibited for certain categories of personnel who exercise functions of authority or who provide essential services. All the other employees of the federal administration enjoy the right to strike.

The Committee requests the Government to make its comments on the observations of the Swiss Federation of Trade Unions concerning restrictions on the right to strike in certain cantons.

[The Government is asked to report in detail in 2001.]

Syrian Arab Republic (ratification: 1960)

The Committee notes the information provided by the Government in its last report. The Committee notes that the Government reiterates the information provided previously and once again indicates that the competent authorities are examining four draft legislative decrees to amend the texts on which the Committee has been commenting for several years. The Government states that a tripartite committee is currently working on the preparation of these draft decrees. These should take into account the observations made by the Committee of Experts and will be transmitted to the Office in due time to ensure their full conformity with the Convention. The Committee once again recalls the need to amend the following provisions.

Act No. 136 of 1958 issuing the Agricultural Labour Code

Section 160, which prohibits strikes in the agricultural sector, and section 262 of the same Code, which provides that any person who instigates or participates in a strike or lockout is liable to a term of imprisonment ranging from three months to one year.

*Legislative Decree No. 84 of 1968 respecting workers' organizations and the amendments thereto up to 1986,
Legislative Decree No. 250 of 1969 respecting craftworkers' associations and Act No. 21 of 1974 respecting rural workers' cooperative associations*

Section 32 of Legislative Decree No. 84 and section 6 of Legislative Decree No. 250, which prohibit unions from accepting gifts, donations and legacies without the prior agreement of the General Federation of Workers' Unions and the approval of the Ministry;

section 35 of Legislative Decree No. 84, which confers on the Ministry broad powers of intervention over trade union finances at every level;

section 36 of Legislative Decree No. 84 and section 12 of Legislative Decree No. 250, which require that first-level trade unions allocate a certain percentage of their resources to higher level trade unions;

section 18(a) of Legislative Decree No. 84, as amended by section 4(5) of Legislative Decree No. 30 of 1982, which confers on the Minister the authority to determine the methods for the use of trade union funds;

section 44(b)(3) and (4) of Legislative Decree No. 84, under which eligibility for trade union office is subject to the prior exercise of the occupation for at least six months and to Arab nationality;

section 49(c), which confers on the Federation the right to dissolve the executive committee of any trade union;

section 25 of Legislative Decree No. 84, as amended in 1982, which continues to subject non-Arab workers to a condition of reciprocity, thereby restricting their trade union rights;

section 1(4) of Act No. 29 of 1986, amending Legislative Decree No. 84, which determines the composition of the congress of the Federation and its presiding officers.

Furthermore, the Committee requests the Government to amend the following provisions, which establish trade union monopoly in breach of the Convention:

- sections 3, 4, 5 and 7 of Legislative Decree No. 84, which organize the structure of trade unions on a single union basis;
- sections 4, 6, 8, 13, 14 and 15 of Legislative Decree No. 30 of 1982, amending Legislative Decree No. 84 of 1968, which designate the Federation as the single central trade union organization;
- section 2 of Legislative Decree No. 250 of 1969 and sections 26-31 of Act No. 21 of 1974 respecting rural workers' cooperative associations, which impose a single trade union system.

Penal codes

The Committee also recalls that it has been requesting the Government for several years to repeal or amend sections 330, 332, 333 and 334 of Legislative Decree No. 148 of 1949 issuing the Penal Code, which restrict the right to strike and lockouts by imposing heavy sanctions, including imprisonment. Furthermore, the Committee recalls that it has also been requesting the Government for several years to repeal section 19 of Legislative Decree No. 37 of 1966, issuing the Economic Penal Code, which imposes forced labour on any person who causes prejudice to the general production plan decreed by the authorities by acting in a manner contrary to the plan.

The Committee once again requests the Government to review its penal legislation and to indicate in its next report any measures which have been taken or are envisaged to bring it into conformity with the principles of freedom of association.

The Committee once again hopes that the amendments proposed in the four draft decrees will be adopted and enacted rapidly and urges the Government to take all the necessary measures to bring all of its national legislation into conformity with the Convention in the near future. The Committee recalls that the technical assistance of the Office is available to the Government. It requests the Government to keep it informed in its next report of any progress achieved and to provide copies of any provisions which have been repealed or amended.

The Committee is also addressing a request directly to the Government.

[The Government is asked to report in detail in 2001.]

Tajikistan (ratification: 1993)

The Committee notes with regret that the Government's report, once again, contains no reply to its previous comments. It urges the Government to provide in its next report full information on the matters raised in its previous comments which concerned the following.

1. *Article 3 of the Convention. Right of workers' and employers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities.* Concerning article 4(1) of the Law on Trade Unions which provides that trade unions shall be independent in their activities and that any interference by state authorities shall not be permitted except in cases specified by law, the Committee requests the Government to specify in its next report in which cases the state authorities are allowed to interfere with trade union activities.

2. *Article 3. Right to strike.* Concerning article 211(3) of the Labour Code which provides that restrictions of the right to strike shall be subject to the provisions of legislation in force in Tajikistan, the Committee requests the Government to provide the text of the provisions relating to such restrictions. Furthermore, the Committee requests the Government to state whether the former provisions of the Penal Code which were at the time applicable in the USSR, and particularly section 190(3), which contained significant restrictions on the exercise of the right to strike in the transport sector, enforceable by severe sanctions, including sentences of imprisonment for up to three years, have been repealed by a specific text.

The Committee also requests the Government to supply in its next report a copy of the Law of 29 June 1991 regulating the organization and holding of meetings, gatherings, street processions and demonstrations. In addition, the Committee requests the Government to indicate what are the legal provisions on the right to organize of employers.

The former Yugoslav Republic of Macedonia (ratification: 1991)

The Committee notes with regret that, since the entry into force of this Convention in 1992, the Government's first report has still not been received.

The Committee is addressing a request directly to the Government on one point and requests the Government to provide detailed replies to the questions contained in the report form sent to it concerning the application of the Convention.

Togo (ratification: 1960)

The Committee has noted the information supplied by the Government in its report. It recalls that its previous comments related to the following points.

1. *Article 2 of the Convention. Right of workers without distinction whatsoever to establish and join trade union organizations, including in export processing zones.* The Committee noted that Chapter V of the agreement concluded on 1 June 1996 concerning relations between employers and workers in the Togolese processing zone, which deals with worker representatives within the enterprises, governs in particular the election procedures for staff representatives, but makes no reference to trade union organizations. Moreover, the Committee notes that Act No. 89-14 of 18 September 1989, establishing the export processing zone, provides, under section 30, that "access to the zone is restricted to duly authorized persons and vehicles". In this connection, the Committee asked the Government to specify whether trade union organizations have free access to processing zones and if they have the right and possibility of presenting candidates as trade union delegates with a view to representing the workers of these zones. In its latest report, the Government indicates that the 1996 agreement contains no provisions banning trade union organizations from processing zones. With regard to the impossibility of presenting candidates as trade union delegates with a view to representing workers, no complaint to this effect has been made by the trade union organizations. While noting this information, the Committee recalls that *Article 1* of the Convention provides that the Government must undertake to give full effect to the provisions of the Convention. Consequently, the Committee requests the Government to envisage the adoption of specific provisions in order to guarantee workers in the export processing zones the right to establish trade unions and to present candidates as trade union delegates to represent them in those zones. It requests the Government to indicate in its next report the measures that have been taken to this effect.

2. *Article 3. Right of workers' organizations to elect their representatives in full freedom.* The Committee recalls that its previous comments dealt with the right of foreign workers to hold trade union office, at least after a reasonable period of residence in the host country. In this regard, the Committee requested the Government to amend section 6 of the Labour Code of 1974, which prohibits foreigners from holding administrative or management posts in trade unions. The Committee notes with interest

the information supplied by the Government in its report to the effect that a draft amendment of this section provides that "members responsible for the administration or management of a union must be of Togolese nationality or be migrant workers residing officially on the national territory and in possession of their civic rights". The Committee expresses the hope that the Government will take the necessary measures without delay to amend section 6 of the Labour Code of 1974 and requests the Government to send it the text of this amendment once adopted.

Trinidad and Tobago (ratification: 1963)

The Committee notes the information provided in the Government's report.

In its previous comments, the Committee recalled the need to amend sections 59(4)(a), 61, 65 and 67 of the Industrial Relations Act, 1972, as amended, which can be applied to prohibit a strike which has not been declared by a majority union, or at the request of one party, or in services which are not essential in the strict sense of the term, or when the Minister considers that the national interest is threatened, under penalty of six months' imprisonment.

The Committee notes from the Government's latest report that the Tripartite Committee established to review the Industrial Relations Act has reviewed these sections and has agreed that these provisions are in keeping with the cultural and legislative environment of the country and are, therefore, in no way objectionable to the parties in the collective bargaining process. The Tripartite Committee does not view these provisions as a deterrent to the Government's conformity with Convention No. 87.

As concerns the prohibition under section 67 of industrial action in essential services, the Committee notes the inclusion of sanitation services and a public school bus service in the list of essential services in schedule 2 and considers that such services cannot be considered to be essential in the strict sense of the term. In this respect, the Committee draws the Government's attention to paragraph 160 of its 1994 General Survey on freedom of association and collective bargaining wherein it states that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, the authorities could establish a system of minimum service in other services which are of public utility rather than impose an outright ban on strikes, which would be limited to essential services in the strict sense of the term. Noting further that section 69 appears to prohibit the teaching service and employees of the Central Bank from taking industrial action, under penalty of 18 months' imprisonment, the Committee requests the Government to indicate whether these restrictions are still in force and, if so, to take the necessary measures to repeal them so that teachers and bank employees are not prohibited from undertaking industrial action.

As concerns the Minister's power under section 61 to refer a dispute to the Court and, under section 65, in cases where the national interest is threatened or affected, the Committee considers that such powers should be limited to essential services in the strict sense of the term, as indicated above, to public servants exercising authority in the name of the State and to cases of acute national crisis.

As concerns the possibility of prohibiting a strike which has not been declared by a majority union (section 59(4)(a)), the Committee recalls that the requirement that the

exercise of the right to strike be subjected to prior approval by a certain percentage of workers is not in itself incompatible with the Convention. On the other hand, legislative provisions which require a vote by workers before a strike can be held should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level (see 1994 General Survey, *op. cit.*, paragraph 170). The Committee considers that the prohibition of strike action by non-majority unions could result in the restriction of the right to strike even where a simple majority of the workers in the bargaining unit, excluding those workers not taking part in the vote, have voted in favour of the strike.

In light of the above, the Committee once again urges the Government to take the necessary measures to bring the legislation into conformity with the Convention and requests the Government to indicate the progress made in this respect.

Tunisia (ratification: 1957)

The Committee notes the information contained in the Government's report.

Article 3 of the Convention. Right of workers' organizations to organize their administration and activities. With reference to its previous comments concerning the obligation to obtain the approval of the central workers' union before declaring a strike, under the terms of section 376bis(2) of the Labour Code, the Committee notes the Government's indication in its last report that the expression "central workers' union" is intended in a broad sense and that, by virtue of a circular of the Tunisian General Labour Union (UGTT) dated 1989 referring to the exercise of the right to strike, all the members of the extended executive board of this organization are empowered to sign the strike notification. This board includes, in accordance with section 16 of the internal rules of the UGTT, in addition to the members of the executive board, all the secretaries general of the organization's regional unions, which include representatives of first-level occupational trade unions and are in direct and permanent contact with first-level trade unions in enterprises. The Government also indicates that the administration has received no complaints from first-level trade unions that the requirement of prior approval for strikes by the central workers' union restricts their right to organize their activities. While noting this information, the Committee nevertheless considers that this provision may be such as to limit the right of first-level trade union organizations to organize their activities and promote and defend the interests of the workers, and it therefore requests the Government to repeal this provision so as to bring its legislation fully into conformity with the principles of freedom of association.

With regard to the essential services listed in section 381ter of the Labour Code, the Committee noted the Government's statement in a previous report that a copy of the Decree determining this list would be forwarded to the Office once it had been adopted. The Committee once again requests the Government to provide in its next report the list of essential services envisaged under section 381ter of the Labour Code.

The Committee is also addressing a request directly to the Government on one point.

Turkey (ratification: 1993)

The Committee notes the information provided in the Government's report, as well as the comments made by the Confederation of Turkish Trade Unions (TÜRK-İŞ), the Confederation of Progressive Trade Unions of Turkey (DISK) and the Turkish Confederation of Employers' Associations (TİSK).

1. *Right of workers' organizations to elect officers freely.* In its previous comments, the Committee noted that section 37 of the Trade Unions Act No. 2821, as amended in June 1997, still provided that union officers may not also be candidates for local administrative and general parliamentary elections, under penalty of imprisonment of up to two years (section 59(6)). In its latest report, the Government indicates that union executive officers may become candidates for local or general elections without losing their union status; rather their official functions are suspended and terminated only if they are elected. According to the Government, this provision is in line with the constitutional principle that members of Parliament represent not merely their own constituencies and constituents, but the nation as a whole. As concerns the penalty of imprisonment, the Government indicates that section 59(6) is only applicable to the second paragraph of section 37. While noting this final point, the Committee must once again recall that it is the prerogative of workers' and employers' organizations to determine the conditions for electing their leaders, and the authorities should refrain from any undue interference in the exercise of the right of workers' and employers' organizations to elect their officers in full freedom, as established under *Article 3 of the Convention*. Thus, the effect of being candidate or being elected in local or general elections should be left to the determination of the trade union members in their respective statutes and not a matter for the Government to regulate. The Committee therefore once again requests the Government to indicate the measures envisaged to repeal this restriction and to ensure that the conditions of eligibility for trade union office are determined by the organizations themselves.

2. *Right to organize of public servants.* As concerns the right to organize for public servants, the Committee notes from the Government's report that the draft bill on public servants' unions submitted by the Government has been approved by the Parliamentary Committee on Health and Social Affairs with several amendments. However, the Parliamentary Committee on Planning and Budget has not concluded its work yet. The Government provided the latest version of the draft Bill in Turkish with its report, indicating that it was still subject to amendments that might be proposed by the Committee on Planning and Budget and General Assembly. The Committee regrets however that the Government did not respond to the 1999 comments made by DISK to the effect that this Bill was in direct contravention with certain principles of freedom of association. The Committee requests the Government to provide information in its next report in reply to the comments made by DISK when the Committee will also be in a position to fully examine the contents of the draft Bill. In this respect, the Committee recalls the need to adopt legislation to ensure the full rights of the Convention to public servants, including the right to strike for public servants who are not exercising authority in the name of the State. It requests the Government to indicate in its next report any developments in respect of the draft Bill.

3. *Rights of workers' organizations to organize activities and formulate their programme free from Government interference.* As concerns its previous comments in

respect of certain restrictions on strike action, the Committee notes the information provided in the Government's report. It notes with regret however that the Government has not provided any information in respect of the prohibition of protest and sympathy strikes (section 54) and the severe sanctions, including imprisonment, for participation in "unlawful" strikes not determined in accordance with freedom of association principles, provided for in Act No. 2822 on collective labour agreements, strikes and lockouts of 5 May 1983, other than to say that no amendments are foreseen in respect of sympathy strikes because of a corresponding provision in article 54 of the Constitution. In this respect, the Committee would draw the Government's attention to paragraphs 168 and 177 of the 1994 General Survey on freedom of association and collective bargaining in which it has indicated that: (1) a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful; and (2) sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Furthermore, if measures of imprisonment are at all to be imposed, they should be justified by the seriousness of the offences committed. The Committee requests the Government to take the necessary measures to amend its legislation, including where necessary the Constitution, in accordance with these principles and to indicate in its next report the measures taken or envisaged in this regard.

As concerns the imposition of compulsory arbitration (section 32 of Act No. 2822) in respect of services which cannot be considered to be essential in the strict sense of the term (sections 29 and 30), the Committee notes the information and statistics provided in the Government's report. The Committee must recall, however, that such restrictions on strike action can only be justified in respect of essential services, public servants exercising authority in the name of the State and in cases of acute national crisis. It further recalls that essential services are only those the interruption of which would endanger the life, personal safety or health of whole or part of the population (see 1994 General Survey, paragraph 159), whereas sections 29 and 30 of Act No. 2822 prohibit strike action in activities and services, including property saving, funeral and mortuary, exploration, production and refining of gas and petroleum, banking and public notaries, sanitation, educational and training or day nursery and old-age retirement homes, and cemeteries. In this respect, the Committee draws the Government's attention to paragraph 160 of its 1994 General Survey wherein it states that, in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, the authorities could establish a system of negotiated minimum service in other services which are of public utility rather than impose an outright ban on strikes, which would be limited to essential services in the strict sense of the term.

Moreover, the Committee considers that sections 21 to 23 of Act No. 2822, read with section 27, require an excessively long waiting period of almost three months from the start of negotiations before a decision to call a strike may be taken. Noting from the Government's report that the Ministry of Labour and Social Security has prepared a draft bill to amend Act No. 2822, among others, the Committee requests the Government to take the necessary measures to amend sections 29 and 30 so as to ensure that strike action may only be prohibited in respect of essential services in the strict sense of the term, public servants exercising authority in the name of the State and in cases of acute

national crisis and to amend sections 21 to 23 so as to ensure that the waiting period prior to declaring a strike is not excessively long.

As concerns the right to strike in export processing zones (EPZs), the Committee recalls that Act No. 3218 of 1985 imposes compulsory arbitration for a ten-year period in EPZs for the settlement of collective labour disputes. According to the Government's report under Convention No. 98, the ten-year period laid down under the Act expired in the Mersin and Antalya zones in 1997 and will come to an end in the Aegean and Atatürk Airport zones in 2000. The Committee would nevertheless recall that the imposition of compulsory arbitration poses a severe limitation on the right of workers' organizations to organize their activities and formulate their programmes free from interference by the public authorities in accordance with *Article 3* of the Convention. It therefore requests the Government to indicate in its next report the measures taken or envisaged to amend Act No. 3218 so that all workers in export processing zones have the possibility of taking industrial action in defence of their interests.

The Committee requests the Government to indicate in its next report the measures taken or envisaged to bring the legislation into conformity with the abovementioned points and once again recalls that ILO technical assistance is available in this regard should the Government so desire.

Finally, the Committee is raising a number of other points in a request addressed directly to the Government.

[The Government is asked to report in detail in 2001.]

Ukraine (ratification: 1956)

The Committee takes note of the report supplied by the Government.

It also notes the conclusions of the Committee on Freedom of Association concerning Cases Nos. 2038 and 2079 (see 318th Report, paragraphs 517-533 and 323rd Report, paragraphs 525-543).

The Committee notes the adoption on 15 September 1999 of the Act of Ukraine on Trade Unions, their Rights and Safeguards of their Activities. More particularly, the Committee takes note of section 11 of the Act which provides that in order for a trade union to obtain district or all-Ukrainian status, it should unite more than half the workers of the same vocation or occupation or should have its organizational units in the majority of administrative territorial units of the same district or in the majority of administrative territorial units of Ukraine. In this regard, the Committee recalls that problems may arise when legislation stipulates that an organization may be set up only if it has a certain number of members in the same occupation or enterprise, or when it requires a high minimum proportion of workers which, in the latter case, in practice precludes the establishment of more than one trade union in each occupation or enterprise. Thus, requirements regarding territorial competence and number of union members should be left for trade unions to determine in their own by-laws and any legislative provisions that go beyond formal requirements may hinder the establishment and development of organizations and constitute interference contrary to *Article 3(2) of the Convention* (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 80-83 and 111). The Committee also notes that section 16 of the Act provides for the compulsory registration of a union which is carried out by a legalizing body that will

verify the correspondence of the status of the union in accordance with the requirements of section 11. In this regard, the Committee recalls that *Article 7* of the Convention provides that the acquisition of legal personality by workers' organizations shall not be made subject to conditions of such a character as to restrict the application of the provisions of *Articles 2, 3 and 4* thereof. Sections 11 and 16 of the Act were challenged in the Constitutional Court of Ukraine and were the object of the two complaints referred to above which were examined by the Committee on Freedom of Association. Following these developments, the Committee notes with interest that on 24 October 2000, the Ukrainian Constitutional Court declared unconstitutional certain provisions of sections 8, 11 and 16 of the Act on Trade Unions, their Rights and Safeguards of their Activities. The Committee asks the Government to supply a copy of the said decision and expresses the firm hope that the Government will take the necessary measures to bring sections 11 and 16 of the Act on Trade Unions, their Rights and Safeguards of their Activities into full conformity with the provisions of the Convention.

Right of workers' organizations to formulate their programme of action without interference from the public authorities, including by recourse to industrial action. The Committee takes note with interest of the adoption in November 1998 of the Presidential Decree and the Regulations on the Establishment of the National Mediation and Conciliation Service which shall take decisions which have the character of recommendations in the settlement of labour disputes. The Committee requests the Government to keep it informed in its next report of the application in practice of this new mechanism for the settlement of labour disputes.

With reference to its previous comments, the Committee had noted that section 19 of the Act on the procedure for the settlement of collective labour disputes provides that a decision to declare a strike must be supported by a majority of the workers or two-thirds of the delegates of a conference. The Committee recalls in this regard that the majority and quorum required for a strike ballot should not be such that the exercise of the right to strike becomes very difficult or even impossible in practice. Any such legislative requirements should therefore ensure that account is taken only of the votes cast and the required majority and quorum should be fixed at a reasonable level (see General Survey, *op. cit.*, paragraph 170). The Committee asks the Government to indicate in its next report the measures taken or envisaged in order to bring section 19 of the Act into full conformity with the principles of freedom of association.

Finally, the Committee once again requests the Government to indicate in its next report whether the former provisions of the Penal Code which were previously applicable in the USSR, and particularly section 190(3) which contained significant restrictions on the exercise of the right to strike in the public and transport sectors enforceable by severe sanctions, including up to three years' imprisonment, have been repealed by a specific text.

United Kingdom (ratification: 1949)

The Committee notes the information provided in the Government's report, as well as the observations made by the Trades Union Congress (TUC) and the mainly public sector trade union UNISON. The Committee requests the Government to reply to these observations in its next reports under this Convention and Convention No. 98.

The Committee first notes with interest the introduction in 1999 of the Employment Relations Act (ERA) which will amend a certain number of provisions of the 1992 Trade Union and Labour Relations (Consolidation) Act upon which the Committee has been commenting for a number of years. In particular, the Committee notes with satisfaction the abolition of the Commissioner for the Rights of Trade Union Members (CRTUM) and of the Commissioner for Protection Against Unlawful Industrial Action (CPAUIA) under section 28 of the ERA which came into force on 25 October 1999. The Committee further notes from section 4 and Schedule 3 of the 1999 Act that the purpose of ballot notice has now been restricted to providing information to help the employer to make plans and bring information to the attention of those of his or her employees concerned, and that it is specifically provided that unions are not required to name the employees concerned when giving ballot notice. Furthermore, the Committee notes with interest the indication in the Government's report that a revised Code of Practice on Industrial Action Ballots and Notice to Employers was issued for consultation in April 2000 reflecting these changes and that the revised Code and the relevant parts of the 1999 Act are expected to come into force on 18 September 2000. The Committee requests the Government to confirm in its next report the entry into force of these provisions and to provide a copy of the revised Code of Practice.

Furthermore, the Committee requests the Government to reply as soon as possible to UNISON's observations concerning these amendments and to provide any information available in respect of the interpretation of the amendments made to section 226A(2)(c).

The Committee also notes, however, that there are a number of points raised in its previous comments which have not yet been addressed.

1. *Unjustifiable discipline (sections 64-67).* The Committee recalls that its previous comments concerned sections 64-67 of the 1992 Act which prevented trade unions from disciplining their members who refused to participate in lawful strikes and other industrial action or who sought to persuade fellow members to refuse to participate in such action. In its latest report, the Government maintains that these sections provide necessary protections for individual workers in their relationship with their unions and the consequent constraints on union freedoms are justified. The Government adds, however, that they do not operate a system of prior vetting or approval of union constitutions or rule books by a public authority.

The Committee takes due note of this information. It once again recalls that unions should have the right to draw up their rules and to formulate their programmes without the interference of the public authorities which should restrict or impede the exercise of freedom of association and so to determine whether or not it should be possible to discipline members who refuse to comply with democratic decisions to take lawful industrial action. It requests the Government to continue to keep it informed of any developments in respect of these provisions and, in particular, to provide in its next report any information concerning complaints brought under section 66 and awards granted in this respect under section 67. It further requests the Government to reply as soon as possible to the observations made by the TUC in respect of these provisions.

2. *Immunities in respect of civil liability for strikes and other industrial action (section 224).* The Committee recalls that its previous comments concerned the absence of immunities in respect of civil liability when undertaking sympathy strikes. It notes the

Government's indication that no changes have been made in this respect. The Committee once again recalls that workers should be able to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute. This principle is of particular importance in the light of earlier comments made by the Trades Union Congress (TUC) that employers commonly avoided the adverse effects of disputes by transferring work to associated employers and that companies have restructured their businesses in order to make primary action secondary. The Committee must reiterate that workers should be able to participate in sympathy strikes provided the initial strike they are supporting is itself lawful, and requests the Government to reply as soon as possible to the issues raised by the TUC and by UNISON in this respect.

The Committee is raising a number of points in a request addressed directly to the Government.

Venezuela (ratification: 1982)

The Committee notes the Government's report and the discussion held in the Conference Committee on the Application of Standards in 2000.

The Committee recalls that for many years its comments have been referring to the following provisions of the Organic Labour Act:

- the requirement for an excessively long period of residence (more than ten years) for foreign workers to hold trade union executive office (section 404);
- the excessively long and detailed list of duties entrusted to and aims to be achieved by workers' and employers' organizations (sections 408 and 409);
- the requirement for an excessively high number of workers (100) to establish trade unions of self-employed workers (section 418); and
- the requirement for an excessively high number of employers (ten) to establish an employers' organization (section 419).

The Committee notes from the Government's report that: (1) a new Constitution came into force on 30 December 1999; (2) by decision No. 0580 of 16 March 2000, issued by the Ministry of Labour, the commission of jurists specializing in labour law was formally established with the mandate of studying and preparing various legal instruments in the field of labour; (3) instructions have been given to this commission of specialists to take into consideration the suggestions made by the ILO's supervisory bodies; and (4) the Government places great value on the observations made by the ILO and reaffirms its intention of resolving the outstanding legislative issues to which the Committee of Experts refers. In this regard, the Committee regrets that, despite the time which has elapsed and the Government's expressions of its intention to bring the legislation into conformity with the Convention, the necessary measures to make these amendments have not yet been taken. In these conditions, the Committee expresses the firm hope that the Government will provide detailed information in its next report on any measure adopted to amend the above provisions of the Organic Act.

Furthermore, the Committee notes with concern that the new Constitution of the Republic, of December 1999, contains a number of provisions which are not in conformity with the requirements of the Convention, as follows:

Article 95. "The constitution and rules of trade union organizations shall require the alternation of executive officers by means of universal, direct and secret suffrage." The Committee recalls that, by virtue of *Article 3 of the Convention*, workers' and employers' organizations shall have the right to draw up their constitutions and rules, and to elect their representatives in full freedom. In this respect, the imposition of the requirement for the alternation of trade union executive officers by legislative means constitutes an important obstacle to the guarantees set forth in the Convention;

Article 293. The electoral authority shall have the functions of: organizing the elections of trade unions, occupational associations and political organizations under the terms set out in the law; Eighth Transitional Provision. While awaiting the enactment of the new electoral laws envisaged in this Constitution, electoral processes shall be convoked, organized, directed and supervised by the National Electoral Council (by means of a Decree published in the *Official Gazette* No. 36.904, of 2 March 2000, respecting measures to guarantee freedom of association, the members of the Electoral Board were appointed and their functions determined, including the achievement of trade union unification or the resolution of issues respecting membership of workers' organizations). In this regard, the Committee considers that the rules governing the procedures and arrangements for the election of trade union leaders should be determined in trade union statutes and not by a body outside workers' organizations. The Committee also considers that the issue of trade union unity and the status of the members of trade unions should be determined by decision of trade union organizations and in no event imposed by law, since such an imposition constitutes one of the most serious violations conceivable of freedom of association.

In these conditions, the Committee requests the Government to take measures to amend the constitutional provisions referred to above, and to repeal the Decree published in *Official Gazette* No. 36.904, of 2 March 2000, respecting measures to guarantee freedom of association, and asks it to provide information in its next report on any measures adopted in this respect.

Finally, the Committee also notes with deep concern the draft texts for the protection of trade union guarantees and freedoms, and the "democratic rights" of workers in their trade unions, federations and confederations, which contain provisions that are in violation of the guarantees set out in the Convention, as well as an agreement issued by the National Assembly to convoke a national trade union referendum on 3 December 2000 with a view to the unification of the trade union movement and the suspension or removal of current trade union leaders, which implies a very serious interference in the internal affairs of trade union organizations, which is totally incompatible with the requirements of *Article 3 of the Convention*.

[The Government is asked to report in detail in 2001.]

Zambia (ratification: 1996)

The Committee notes the information contained in the Government's report. The Committee recalls that its previous comments concerned the following discrepancies between the Labour Relations (Amendment) Act, 1997, and the provisions of the Convention:

the discretionary power of the Minister to exclude workers from the scope of the Act;

the limitations of the right to strike.

1. *Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations.* As regards the general discretionary power of the Minister to exclude employees from the scope of the Act (section 2(2)), the Committee notes with interest the information provided by the Government in its report that this power has not been used at all. However, considering that pursuant to *Article 2* of the Convention, workers and employers, *without distinction whatsoever*, are to have the right to form and join organizations of their own choosing, with the only possible exception being the police and armed forces (*Article 9* of the Convention), the Committee recalls that the discretionary power of the Minister should not be exercised in such a way as to deny workers the rights guaranteed under the Convention. It therefore asks the Government to amend this provision to bring it into full conformity with the Convention and to inform it in its next report of all measures taken in this regard.

2. *Articles 3 and 10 of the Convention. Right of organizations to organize activities to further and defend the interest of their members.* The Committee recalls that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. The Committee further recalls that this right can only be limited or restricted in specified circumstances, namely in the case of an acute national crisis or in essential services in the strict sense of the term, namely those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population. If the right to strike is subject to such restrictions or prohibition, workers should be afforded compensatory guarantees, for example conciliation and mediation procedures leading, in the event of a deadlock, to arbitration machinery seen to be reliable by the parties concerned.

The Committee notes once again that certain provisions in the Labour Relations Act, 1997, limit or restrict strikes in circumstances that go beyond those permitted under the Convention, in particular under section 78(6) to (8), a strike can be discontinued if it is found by the court not to be "in the public interest", and section 100 refers to exposing property to injury. In addition, section 107 prohibits strikes in essential services and section 107(10)(f) defines essential services broadly, in that it includes any service for the maintenance of not only safe but also sound conditions in mines, and the sewage services. The Minister, in consultation with the Tripartite Consultative Labour Council, is also empowered to add any other service to the list of essential services (section 107(10)(g)) where strikes are prohibited. The Committee notes with interest the Government's statement that during the revision of the Industrial and Labour Relations Act, it will take into consideration the previous indication made by the Committee; that is to say that the Government might substitute for the legislated restrictions that go beyond those permitted under the Convention the concept of minimum negotiated services, which should be limited to the operations that are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. The Committee asks the Government to inform it in its next report of any progress made in this area.

With reference to its previous comments regarding the conciliation procedure that must be undertaken pursuant to section 76 of the Act before a strike can take place, the Committee takes note of the information supplied by the Government in its report to the effect that there is no time frame provided in which conciliation should end; the conciliator terminates the conciliation effort when he or she is convinced that the continued effort will not result in a positive development. The Committee recalls the importance of ensuring that the procedures that are to be exhausted before a strike may be called must not be so slow or complex that a lawful strike becomes impossible in practice or loses its effectiveness. Furthermore, as regards the interpretation of section 78(1), the Committee notes that a recent decision of the Industrial Relations Court ruled that *either* party may now take the matter to court, and that this decision will be incorporated into law in due course. Recalling that recourse to arbitration should be at the request of both parties or eventually of one party in the case of strikes occurring in essential services in the strict sense of the term or in case of an acute national crisis, the Committee asks the Government to forward a copy of the decision of the Industrial Relations Court to enable it to examine its compatibility with the principles of freedom of association.

With reference to its previous comments as regards the possibility for a police officer to arrest without a warrant a person who is believed to be striking in an essential service or who is violating section 100 and the fact that this person is then liable to a fine and up to six months' imprisonment (section 107), the Committee notes the information supplied by the Government in its report that no worker or workers have been arrested and imprisoned when the workers in an essential service resorted to industrial action and, often times, the issue of imprisonment has never been considered. However, fines have been imposed on workers who, in furtherance of their industrial action, resort to violence and their action threatens state security. The Government also states that the action usually ends at police stations after the admission of guilt and the payment of fines. Nevertheless, as sanctions for strikes should not be disproportionate to the seriousness of the violation, the Committee requests once again the Government to amend these provisions to bring them into full conformity with the principles of freedom of association, in particular by removing the sanction of imprisonment for strikes other than those in essential services in the strict sense of the term or in case of an acute national crisis.

Concerning the measures taken or contemplated to bring the legislation into closer conformity with the Convention, the Committee notes that the Government will take its concerns into consideration when the ILO's financially supported revision takes place. The Committee reminds the Government that its technical assistance is at the disposal of the national authorities. It firmly hopes that all the necessary measures will be taken in the near future to bring the national legislation into full conformity with the Convention and it requests the Government in its next report to indicate any progress made in this area.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Australia, Bangladesh, Belarus, Benin, Canada, Czech Republic, Denmark, Egypt, France, Gabon, Grenada, Haiti, Hungary, Kyrgyzstan, Latvia, Lesotho, Lithuania, Luxembourg, Mali, Republic of Moldova, Mongolia,*

Pakistan, Panama, Paraguay, Peru, Romania, South Africa, Sri Lanka, Swaziland, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, United Kingdom, Zambia.

Information supplied by *Argentina, Portugal, Ukraine, Uruguay* and *Venezuela* in answer to a direct request has been noted by the Committee.

Convention No. 88: Employment Service, 1948

Argentina (ratification: 1956)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. The Committee notes that the National Employment Service has been transformed into a public employment agency (APC), resulting in the establishment of labour intermediation units. In December 1996, the Programme Management Coordination Unit was established with the function of coordinating the operation of labour and employment training programmes of the Secretariat of Employment and Vocational Training. The Committee trusts that the Government will continue to discharge the essential duty of the employment service, with a view to the best possible organization of the employment market, and will review it to meet the new requirements of the economy and the active population (*Articles 1 and 3 of the Convention*). In this respect the Committee hopes that in its next report the Government will be able to provide statistical information available in published annual or periodical reports concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices, as requested in *Part IV of the report form*.

2. *Articles 4 and 5* In reply to the comments which it has been making for many years, the Government states that measures have not currently been adopted for the establishment or functioning of advisory committees. The Committee trusts that the Government will be able to indicate in its next report that the committees required by the Convention are operational so as to give full effect to the above provisions of the Convention, which provide for the cooperation of representatives of employers and workers through advisory committees in the organization and operation of the employment service and in the development of employment service policy.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Bolivia (ratification: 1977)

The Committee notes the information contained in the Government's candid report. The Government has begun to establish a network of offices in La Paz, Cochabamba and Santa Cruz, in accordance with the requirements of *Article 2 of the Convention*; and placement services and training are provided to young persons under a Code for Children and Adolescents (1999), as required under *Article 8*. However, in all other respects, the Government is having substantial difficulty applying the provisions of the Convention because, in the words of the Government, the employment service is organized in a "precarious manner" that undermines its usefulness to employers and workers.

The Committee notes the Government's request for technical assistance from the Office to help it establish a sound basis for applying all of the provisions of the Convention, including in particular a tripartite consultative committee (*Article 4*), a clear link between the employment service and the national employment policy (*Article 1, paragraph 2*), and a basic network of offices (*Article 3*). It hopes that the Office will be able to provide the needed assistance in the near future. The Committee asks the Government to keep it informed of progress made in applying the Convention.

[The Government is asked to report in detail in 2002.]

Democratic Republic of the Congo (ratification: 1969)

The Committee again notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Article 3 of the Convention. The Committee notes that, according to the information supplied by the Government, it has not been possible to continue the work begun in 1986 of establishing employment offices and that existing offices are experiencing operating difficulties due to lack of qualified staff and equipment. The Committee can only reiterate the hope that the Government will be able to take the measures necessary to allow the network of employment offices to operate and develop in accordance with the provisions of this Article of the Convention and will be able to supply the relevant information.

Articles 4 and 5. The Committee notes that the draft ordinance establishing the new National Employment Service, which, according to the Government, would ensure the cooperation of employers' and workers' representatives in accordance with *Articles 4 and 5*, has still not been adopted. It requests the Government to indicate in its next report in what way the consultations prescribed are conducted in practice and provide the Office with the text of the ordinance once it is adopted.

The Committee notes that the Government indicates that it will be able to supply in its next report the statistical information required.

The Committee hopes that the Government will take all possible measures in the near future.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes from the Government's brief report that a technical committee has been established to reply to the comments of the Committee, but that it has not met yet. The Committee hopes that a detailed report will be supplied for examination at the next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

The Committee notes the information supplied by the Government in its report. Whilst the Government refers to General People's Committee Order No. 862, 1992, section 3 which requires the General Manpower Authority to implement certain named matters, that does not answer the points raised in the previous requests of the Committee. The Committee is therefore bound to raise them again.

Articles 4 and 5 of the Convention. The Committee asks the Government to indicate in greater detail what consultations on the organization and operation of the employment service and the development of the employment service policy are carried out under the aegis of the General People's Committee on Vocational Training and the people's committees on vocational training at the municipal level which, according to the Government, have entire responsibility in this area.

Article 6. The Committee notes that, according to the information supplied by the Government, the General Manpower Authority established by a decision of the General People's Committee in 1992, is responsible, in particular, for regulating the employment of migrant workers. It would be grateful if the Government would describe in greater detail the content and effect of Orders Nos. 4, 5 and 37 of 1993 respecting the organization of the Authority. Please indicate also the role played by the manpower and in-house training offices in facilitating the movement of workers from one country to another which may have been approved by the governments concerned, and in facilitating occupational mobility, in accordance with *paragraph (b)* of this Article of the Convention. Lastly, the Committee asks the Government to describe the activities carried out by these offices in order to fulfil the tasks listed in *paragraphs (a), (c), (d) and (e)* of this Article (see also *Parts IV and VI of the report form* adopted by the Governing Body).

Article 9. The Committee asks the Government to provide information on the methods of recruitment and selection of employment service staff.

Lithuania (ratification: 1994)

The Committee notes with interest the comprehensive information supplied in response to its previous comments, as well as other information on the substantial progress the Government has made in expanding its employment services. It notes in particular the extensive efforts the Government has made to include representatives from civic society in developing employment service policies and programmes, including a non-governmental organization which aids former convicts to reintegrate into society and organizations representing people with disabilities.

Sao Tome and Principe (ratification: 1982)

The Committee notes with regret that the Government's report has not been received for several years. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its direct request, which read as follows:

The Committee notes that the public employment service in Sao Tome and Principe is free of charge (*Article 1, paragraph 1, of the Convention*). It hopes that in its next report the Government will supply further information on a number of points that have already been raised in its previous direct request and, particularly, on the arrangements made in accordance with *Articles 4 and 5* to ensure the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy. Please also continue to supply statistical information and the other published information indicated in *Part IV of the report form* on the work of the CNE respecting the appropriate measures to be taken in accordance with the provisions of *Article 6(b), (c) and (e)* of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, and urges the Government to seek the assistance of the Office, if necessary.

Sierra Leone (ratification: 1961)

The Committee notes with regret that the Government's report has not been received for several years. It must therefore repeat its previous observation which read as follows:

The Committee notes from the Government's report that the draft Employment Service Regulations to which the Government has been referring since 1974 have still not been adopted. The Government indicates once again that the question of the adoption of the draft Regulations is still on the agenda of the next meeting of the Joint Consultative Committee.

The Committee reiterates its hope that the new provisions will be adopted in the very near future and that the next report will contain the information previously requested on: (a) the setting up of national, and where necessary regional and local, advisory committees ensuring the participation of employers' and workers' representatives in equal numbers in the organization and operation of the employment service and in the development of the general policy of this service, in accordance with *Articles 4 and 5 of the Convention*; and (b) the determination of the functions of the employment service in accordance with *Article 6*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, and urges the Government to seek the assistance of the Office, if necessary.

Venezuela (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. The Committee notes the Government's report for the period ending 31 May 1998. The report contains information on the points raised in the recommendations of the Committee set up by the Governing Body to examine the representation made by the International Organization of Employers (IOE) and the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) under article 24 of the ILO Constitution (document GB.256/15/16 of May 1993). The Government refers to the first national tripartite agreement reached on 17 March 1997 which states the need to strengthen the Employment Service of the Ministry of Labour with a view to improving its potential as an instrument of employment policy. The agreed employment plan, which was signed on 16 December 1997, establishes the need to strengthen labour mediation, reorient vocational training policy, promote the employment of disabled people and develop a pilot programme of employment reference and support centres. The Committee notes this information and also notes that these basic elements should make it possible to give effect to the provisions of the Convention. The Committee therefore requests the Government to keep it informed of any progress made to ensure that the essential functions of the employment service are maintained, in accordance with *Article 1 of the Convention*.

2. The Committee again refers to the following points that were raised in the recommendations of the tripartite Committee:

- (i) The Government indicates that, with regard to section 597 of the Organic Labour Act, it does not consider it appropriate at the moment to set up local advisory committees owing to the restructuring of the National Employment Service. However, the National Employment Council has been set up and will serve as a basis for the establishment of local committees in the future. The Committee trusts that the Government will continue to provide information on the measures taken by the National Employment Council with regard to the employment service. It also requests the Government to indicate the number of advisory committees established at the national and regional levels, how they are constituted, and what procedure has been adopted for appointing employers' and workers' representatives. To allow an assessment of the effect given to *Articles 4 and 5 of the Convention*, the Government is requested to provide information on the arrangements made through these advisory

committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service, and in the development of the general policy of the employment service.

- (ii) The Committee recalls that the tripartite Committee invited the Government to furnish information on the measures taken, in collaboration with employers' and workers' organizations, in accordance with *Article 10* of the Convention, to encourage full use of employment service facilities by employers and workers on a voluntary basis. The Committee notes that, within the framework of the plan to establish four employment reference and support centres, a programme of meetings and exchanges with the most representative sectors of the workers and employers has been commenced. The Committee asks the Government to continue to provide information on the results achieved by the afore-mentioned plan.

3. The Committee recalls that the recommendations of the tripartite Committee included an invitation to the Government to amend the text of section 604 of the Organic Labour Act in order to avoid any ambiguity in its interpretation and application and bring it fully into line with *Articles 4 and 5* of the Convention, which provide for no distinction between employers' and workers' organizations with regard to their cooperation in the organization and operation of the employment service. The Committee would be grateful if the Government would indicate its position in this regard.

4. The Committee urges the Government to continue to adopt measures to give full effect to the provisions of *Articles 4, 5 and 10*, and also hopes that the Government will provide a detailed report on the application of the Convention including statistical information, annual or periodic reports, and information on the number of public employment offices, applications for employment received, offers of employment notified and job placements made by the offices, as requested in *Part IV of the report form*.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belize, Ghana, Guinea-Bissau, Malta, Nigeria*.

Information supplied by *Denmark* in answer to a direct request has been noted by the Committee.

Convention No. 89: Night Work (Women) (Revised), 1948

Algeria (ratification: 1962)

The Committee notes the information supplied by the Government in its report. It also notes the statistical data concerning the exemptions granted by specific regional labour inspectorates in respect of night employment of female workers.

The Committee recalls its previous comments in which it noted that, according to article 27 of Act No. 90-11 of 21 April 1990, respecting labour relations, night work is taken to mean any work performed between 9 p.m. and 5 a.m., while *Article 2 of the Convention* provides that the term "night" signifies a period of at least 11 consecutive hours, including an interval of at least seven consecutive hours falling between 10 o'clock in the evening and 7 o'clock in the morning.

The Committee also notes that, under article 29 of Act No. 90-11 of 21 April 1990, respecting labour relations, the labour inspector may exceptionally authorize the employment of women during the night if the nature and special circumstances of the work so require. The Committee stresses in this regard that the only exemption

possibilities allowed by the Convention are those specifically provided for in *Articles 3, 4, 5 and 8*. The Committee cannot but draw attention once more to the decree, already planned since 1985, to determine the production or service units or workplaces in which the night work of women is permitted, reiterating the hope that this decree will be adopted shortly and that it will take account of the provisions of the Convention.

The Committee recalls that the principal obligation for a Government arising out of the ratification of an international labour Convention is to take such action as may be necessary to make effective the provisions of the ratified Convention, and to continue to ensure its application for as long as it does not decide to denounce it. The Committee trusts that the Government will not fail to indicate in its next report the progress made in eliminating the divergences between the legislation and the Convention.

The Committee also wishes to draw the Government's attention to the Protocol of 1990 to Convention No. 89, which offers greater flexibility in the application of this Convention.

Angola (ratification: 1976)

Article 2 of the Convention. The Committee notes with satisfaction that under article 271(1) of the new General Labour Act No. 2 2000, the compulsory interval for women between two periods of work has been extended from ten to 12 hours, thus bringing the night period during which women may not be employed in industrial enterprises into conformity with the provision of the Convention.

The Committee is also addressing a request directly to the Government.

Bolivia (ratification: 1973)

The Committee takes due note of the information supplied by the Government in its report.

The Committee recalls its previous comments in which it noted that, according to article 46 of the General Labour Act of 26 May 1939 as amended, night work is defined as any work performed between 8 p.m. and 6 a.m., that is a period of ten hours, whereas *Article 2 of the Convention* provides that the term "night" signifies a period of at least 11 consecutive hours. In addition, the Committee has been requesting the Government for many years to clarify the exact meaning of article 60 of the above Act according to which the prohibition of night work does not apply to "other forms of work to be determined".

In its report, the Government states that the exemption referred to in article 60 relates to women employed in certain branches of activity such as the health sector, radio and television media, telecommunications, and civil or commercial aviation. The Committee takes note of this information but once again recalls that the only exceptions allowed by the Convention are those specifically provided for under *Articles 3, 4, 5 and 8*. Furthermore, the Committee observes that under article 52 of the regulations relative to the General Labour Act, Decree of 23 August 1943, the Minister of Labour may grant special authorizations "in specific cases" which again shows the need to ensure that any exceptions to the night work prohibition meet the strict requirements of the provisions of the Convention.

The Committee also notes that the Government refers once more to the ongoing process of revision of the labour legislation. It recalls that since 1993 a preliminary draft of the new General Labour Act had been elaborated which, according to the Government's indications, would have taken into consideration the comments of the Committee in order to bring the national legislation into conformity with the international labour Conventions ratified by Bolivia.

The Committee trusts that the necessary measures will be adopted without further delay to eliminate the discrepancies to which the Committee has been drawing attention for some time past. It requests the Government to keep it informed of any progress achieved in this regard.

The Committee also wishes to draw the Government's attention to the Protocol of 1990 to Convention No. 89, which offers greater flexibility in the application of this Convention.

Costa Rica (ratification: 1960)

The Committee notes the information provided in the Government's reports.

The Committee notes that, even though women's night work remains, in principle, generally prohibited in accordance with article 88 of the Labour Code, article 1 of Decree No. 26898-MTSS of 30 March 1998 authorizes the employment of women during the night in industrial undertakings for reasons of national interest. According to the text of the Decree, there was an imperative need to update the regulation of night work since restrictions on women's night work constituted sex discrimination contrary to the constitutional principle of equality and the principle of free access to employment. The Committee is led, therefore, to conclude that by adopting Decree No. 26898-MTSS the Government has lifted the general prohibition of night work for women and has thus ceased to apply the Convention.

In addition, the Committee notes that the Decree refers to *Article 5 of the Convention*, which, however, only relates to suspension "when in case of serious emergency the national interest demands it", and has therefore no bearing with the Decree of 1998.

The Committee recalls that the principal obligation for a government arising out of the ratification of an international labour Convention is to take such action as may be necessary to make effective the provisions of the ratified Convention, and to continue to ensure its application for as long as it does not decide to denounce it. Therefore, the Committee asks the Government to indicate the measures it intends to take to bring national legislation into conformity with the Convention.

The Committee takes this opportunity to invite the Government to give favourable consideration to the ratification of either the Night Work Convention, 1990 (No. 171), or the Protocol of 1990 to Convention No. 89.

Ghana (ratification: 1959)

The Committee notes the information supplied in the Government's reports. In its previous comments, the Committee had noted the need to amend section 41(1a) of the Labour Decree of 1967 which, contrary to the provisions of the Convention, permits the

suspension of the prohibition of women's night work when work is interrupted by reason of a strike.

The Committee notes with regret that no progress was made in this respect. The Government reiterates in its report that the National Advisory Committee on Labour has addressed the issue and has recommended the deletion of the word "strike" in the above-cited section of the Labour Decree.

The Committee also notes the Government's statement that the new Labour Code, which is now under consideration with a view to synchronizing the provisions of labour laws with international labour standards, is expected to reflect the suggested amendment. However, the Committee notes that according to article 78(1a) of the draft Labour Act, 2000, the general prohibition of night work for women would appear to have been lifted, except for pregnant women workers who may not be assigned to night work without their consent between 10 p.m. and 7 a.m.

The Committee hopes that the necessary measures will be adopted without further delay to ensure that the discrepancy to which the Committee has been drawing attention for 30 years is eliminated. It requests the Government to provide information in its next report on the progress achieved in this regard.

The Committee takes this opportunity to invite the Government to give favourable consideration to the ratification of either the Night Work Convention, 1990 (No. 171), or the Protocol of 1990 to Convention No. 89.

Kuwait (ratification: 1961)

The Committee notes the information provided in the Government's reports.

Following up on its previous comments concerning the need to extend the application of the Convention to certain categories of workers who are excluded from the Labour Law in the Private Sector, No. 38 of 1964 (i.e. workers in enterprises operating without recourse to power and employing less than five people, and casual and temporary workers engaged for less than six months), the Committee regrets that no progress is made and that the Bill to amend Law No. 38 of 1964 has yet to be formally adopted.

Bearing in mind that the Committee has been drawing attention to this point for more than 25 years, the Committee expresses the hope that measures will be taken without further delay to eliminate the divergences between the national legislation and the provisions of the Convention.

The Committee also wishes to draw the Government's attention to the Protocol of 1990 to Convention No. 89, which offers greater flexibility in the application of this Convention.

Panama (ratification: 1970)

The Committee notes the information provided in the Government's reports.

Following up on its previous comments, the Committee notes with regret that the Government has never given effect to the provisions of the Convention since its ratification in 1970. The Committee also notes that Decree No. 252 of 30 December 1971 establishing the Labour Code contains no provision prohibiting night work for

women in industrial undertakings with the exception of article 116 which provides that pregnant workers may not be employed between 6 p.m. and 6 a.m., and article 120(1) which prohibits young persons under 18 years from working from 6 p.m. to 8 a.m.

In addition, the Committee notes from the Government's reports that the Supreme Court of Panama in its judgment of 29 April 1994 had found article 104 of the Labour Code prohibiting women's employment in underground work to be unconstitutional, considering that the protection intent reflected in that provision was contrary to the principles of equality and non-discrimination in employment as endorsed in articles 19 and 20 of the Constitution.

The Committee recalls that the Government remains fully bound by the provisions of the Convention until such time a formal act of denunciation takes effect in accordance with *Article 15(1) of the Convention*. This implies that as long as the Government does not proceed to denounce the Convention, it has the obligation to take the necessary measures to eliminate the incongruity between the national legislation and international commitments made on account of the acceptance of the Convention. The Committee requests the Government to keep it informed of any decisions taken in this matter.

The Committee takes the opportunity to invite the Government to give favourable consideration to the ratification of the Night Work Convention, 1990 (No. 171).

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Austria, Brazil, Burundi, Czech Republic, Dominican Republic, Egypt, Iraq, Lebanon, Malawi, Paraguay, Rwanda, Slovenia, South Africa, Swaziland, Zambia.*

* * *

The Committee wishes to recall that its General Survey of this year refers to Conventions Nos. 4, 41 and 89 and its Protocol of 1990. The Committee invites the governments to examine this survey, in particular with respect to the application of Convention No. 89.

Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948

India (ratification: 1950)

The Committee notes the information supplied by the Government in its report.

The Committee also takes note of the comments made by the National Front of Indian Trade Unions (NFITU). It notes in particular the information that, in the industrial undertakings in both the private and public sectors which are governed by the Factories Act, the Mines Act, the Plantations Act or similar legislation, the inspectorate supervises implementation of the national legislation on night work of young persons. In the informal or unorganized sector, however, young persons working at night do not enjoy the same safeguards. Furthermore, most of the population of India live in rural areas where the workers are not organized and are obviously not protected. In its comments the NFITU states that, in practice, deviations from the principles laid down in the

Convention are widespread, particularly in the following sectors: tea plantations, fisheries and domestic work.

The Committee hopes that the Government will send its comments on the observations made by the NFITU. It urges the Government to take all necessary measures effectively to prohibit the night work of children in the abovementioned sectors and in any other sector facing the same problem. It also asks the Government to take all necessary steps to ensure that inspection in the informal sector is as diligent as in industries covered by the legislation, to ensure that the Convention is applied in all sectors of activity.

Article 2, paragraphs 1 and 2, of the Convention. In the comments it has been making for many years, the Committee has noted that section 70(1A) of the Factories Act, 1948, as amended in 1987, prohibits the night work of adolescents under 17 years of age between 7 p.m. and 6 a.m., i.e. for a period of 11 consecutive hours. The Committee recalls that in *Article 2, paragraph 1*, of the Convention the term "night" signifies a period of at least 12 consecutive hours. The Committee trusts that the Government will take the necessary steps to bring the law into conformity with the Convention on this point.

Article 3, paragraph 2, Article 4, paragraph 2, and Article 5. In its previous comments the Committee also noted that under section 70(1A) of the Factories Act, 1948, state governments may vary the prescribed time limits and authorize exemptions in case of emergency where the national interest so demands. The Committee trusts that the Government will take the necessary measures to bring the legislation into line with *Article 3, paragraph 2* (concerning children over the age of 15 years in the case of apprenticeships or vocational training in enterprises where work has to be carried on continuously), *Article 4, paragraph 2* (concerning young persons over 15 years of age in the case of emergencies which interfere with the normal working of the undertaking), and *Article 5* (concerning children over 15 years of age in exceptional circumstances where the public interest demands it) on this point.

In its report the Government states that it takes note of the points made by the Committee. It also mentions that the Factories Act is currently being revised and that the proposals for amendment are ready for approval by the competent authorities. The Committee notes that the Government undertakes to inform the Office of any progress achieved in this respect in its next report. It hopes that the Government will make every effort, therefore, to bring the national legislation into harmony with the Convention.

Saudi Arabia (ratification; 1978)

With reference to its previous comments, the Committee notes the indication in the Government's report that the Labour Code was amended so as to be in conformity with *Article 2 of the Convention*, which provides for a period of at least 12 consecutive hours during which children and young persons are prohibited from working. This amendment will be included in the new Labour Code whose promulgation is expected soon. The Committee hopes that this new code will soon be promulgated and asks the Government to send a copy of the legislative text that amended the Labour Code.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Cuba, France, Guinea, Lithuania, Netherlands, Norway, Pakistan, Peru, Philippines, Poland, Slovakia, Sri Lanka, Swaziland, Uruguay.*

Convention No. 91: Paid Vacations (Seafarers) (Revised), 1949

A request regarding certain points is being addressed directly to *Croatia.*

Convention No. 92: Accommodation of Crews (Revised), 1949

Brazil (ratification: 1954)

In its previous comments the Committee expressed the hope that the Government would adopt legislation to ensure the application of the provisions of Parts II, III and IV of the Convention. The Committee notes the Government's indication in its report that the Tripartite Working Group established under Order No. 893 of the Ministry of Labour and Administration of 15 September 1992 for the purpose of bringing the provisions of Convention No. 147 into practice has proposed to adopt standard regulations on safety and health in maritime work. Such regulations will be published shortly so that the public can be appraised of them and react; they will afterwards be discussed by the Standing Tripartite Commission (CTPP). The Government indicates that the text to be published lays down provisions concerning safety and accommodation on board ships, based on Convention No. 92, covering, in particular, accommodation, sleeping rooms, berths, mess rooms and galleys, sanitary and recreation accommodation, facilities for washing and drying clothes, as well as accommodation for working clothes and protective equipment. It also indicates that the standard regulations can thus only be adopted following the general public consultation and approval by the CTPP. The Committee further notes that the abovementioned Tripartite Working Group has adopted Order No. 210 of 30 April 1999, laying down provisions concerning the supervision of working and living conditions on board ships.

The Committee hopes that the Government will be in a position to report on progress made in the near future and that the provisions to be adopted will ensure compliance of the national legislation with the requirements of the Convention.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Israel, Ukraine, United Kingdom.*

Convention No. 94: Labour Clauses (Public Contracts), 1949

Cameroon (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

Further to its previous observation, the Committee notes the Government's statement to the effect that the necessary measures to bring the legislation into conformity with the

provisions of the Convention are in progress. The Government also indicates that it has accepted the suggestion to consider requesting ILO assistance in adopting the necessary legislation to apply the Convention.

The Committee recalls that section 18 of Decree No. 86/903 of 18 July 1986 governing public contracts, which provides that enterprises submitting tenders must undertake in their bid to comply with all legislative, regulatory or collective agreement provisions relating to wages, working conditions, safety, health and welfare of the workers concerned, does not implement *Article 2 of the Convention* requiring the inclusion of clauses guaranteeing to workers in enterprises involved in public contracts the same working conditions as those for work of the same character in the trade or industry concerned in the nearest appropriate district.

The Committee hopes that the Government will adopt the necessary measures to bring its legislation into conformity with the Convention. It requests the Government to indicate all measures taken or envisaged in this regard, including contact made with the ILO in regard to the possibility of technical assistance.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Central African Republic (ratification: 1964)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

With reference to the comments it has been making for a number of years, the Committee notes the statement to the effect that the Government intends to supplement Decrees Nos. 61/135 and 61/137 of 19 August 1961 relating to public contracts for the supply of goods and services, taking into account the Committee's suggestions. Recalling that the Government has been expressing this intention since 1982, the Committee hopes that the Government will be able to adopt these texts in the very near future. In this connection, the Committee emphasizes that in accordance with the provisions of *Article 2, paragraph 1, of the Convention*, the contracts to which the Convention applies shall include clauses guaranteeing to the workers concerned working conditions, and not only wages, which are not less favourable than those established for work of the same character in the trade or industry concerned in the same district. The Committee hopes that the Government will be able to supply the texts adopted with its next report.

With regard to the National Collective Agreement for Public Works and Construction, the Committee requests the Government to supply a copy of this agreement since the copy referred to in its earlier report has not been received.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Costa Rica (ratification: 1960)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

The Committee notes the comments made by Association of Customs Officers (ASEPA) in a communication dated 12 October 1995. It notes that, although the ASEPA mentions Convention No. 94 among others, there is no information in the communications that would allow the Committee to judge whether there has been any infringement of the provisions of the Convention. The Committee recalls that the Convention applies to public contracts which involve the employment of workers by the party other than the public

authority (*Article 1(1)(b)(ii) of the Convention*), and that the employment contracts between a public authority and its employees are outside the scope of this Convention.

The Committee hopes the Government will make every effort to take the necessary action in the very near future.

Democratic Republic of the Congo (ratification: 1960)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee noted that in its previous report the Government repeated, as it had for years, that the legislative text would be communicated as soon as it has been brought into line with the provisions of the Convention.

The Committee again strongly suggests that the Government take the necessary steps to ensure that the text designed to give effect to the Convention, for which preparations started in 1979, is adopted in the near future.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Egypt (ratification: 1960)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

Further to its previous observation, the Committee notes the Government's repeated reference to section 57 of the Labour Code (Act No. 137 of 1981) for the application of *Article 2 of the Convention*.

The Committee once again points out that the requirement of the Convention under *Article 2* is to ensure the insertion of a labour clause in public contracts so as to guarantee to the workers employed by the contractor, the prevailing labour conditions which have been established in any of the three ways specified in *Article 2(1), items (a), (b) and (c)*. The Committee also recalls that these three items do not stipulate the manner in which the Convention should be applied. The principal aim of a labour clause is to protect fair conditions of labour from the consequences of competitive practice of tendering for a public contract, in which firms tendering for a public contract may feel the temptation to calculate labour costs at a level lower than the prevailing conditions. In addition, the provision of penalties in the labour clauses, such as the withholding of contracts, makes it possible to impose effective sanctions directly in case of violations.

The Committee recalls that section 57 of the Labour Code concerns the equality of treatment between a subcontractor's own workers and those of the employer. In the case of a public contract, for example, for the construction of some public works, when there is no employee of the public authority (the employer) engaged in construction work, "the equality of treatment" cannot guarantee any protection for the employees of the subcontractor. Therefore, this section 57 does not ensure the above-mentioned purposes of labour clauses in public contracts, and does not suffice for the application of *Article 2* of the Convention.

The Committee recalls that the Government once indicated in its earlier report certain actions taken by the Central Body for Management and Administration to circulate instructions that a clause should be included in all public contracts in order to guarantee to the workers concerned conditions of labour not less favourable than those of other workers performing the same work. The Committee notes with regret that no further information has been supplied in this regard.

Recalling that it has been commenting on the application on the Convention since its ratification by Egypt, the Committee again expresses the hope that the Government will take appropriate measures (whether by way of legislation or administrative instructions) to provide for the insertion of a labour clause in public contracts in accordance with the provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guinea (ratification: 1966)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

The Committee notes the information supplied by the Government in its report to the effect that there are no legal or practical difficulties in implementing this Convention. The Committee recalls that States ratifying this Convention undertake, amongst other things, to ensure that contracts awarded by a public authority which involve the employment of workers by the other party to the contract include clauses ensuring for the workers concerned conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on (*Article 2 of the Convention*), and that adequate sanctions are applied for failure to observe and apply such clauses (*Article 5*).

The Committee also notes that the Government again states that enterprises which are awarded public contracts are subject to the provisions of the Labour Code and of sectoral collective agreements. It recalls that the general application of national labour legislation to workers does not release the Government from its obligation to take the necessary steps to ensure the inclusion and application of labour clauses, as required by the Convention. The Committee again expresses the hope that the Government will shortly take the necessary measures to ensure that such clauses are included in all the public contracts provided for in *Article 1, paragraph 1(c)*, and thereby give effect to the Convention, on which the Committee has been commenting for several years.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Mauritania (ratification: 1963)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

Further to its previous comments the Committee notes that Interministerial Order No. 035 of 3 June 1992, which establishes the labour clauses to be included in public contracts, was published in *Official Journal* No. 807 of 30 May 1993.

The Committee is also addressing a request directly to the Government concerning certain points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Rwanda (ratification: 1962)

The Committee notes the statement by the Government in its report that a Bill on Public Markets is at present before the Council of Ministers for examination and adoption. In this connection, the Committee requests the Government to explain the

relation between this Bill on Public Markets and public contracts, which is the subject matter of the Convention. It also recalls that this Convention obliges the Government to take steps to ensure that the public contracts included under *Article 1(1) of the Convention* contain the appropriate labour clauses, in conformity with *Article 2*, so as to guarantee that the conditions of employment (including wages) of workers employed under public contracts are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on.

The Committee hopes that this new legislation will be adopted in the very near future and will contain the provisions to apply the Convention. The Committee asks the Government to supply a copy of this Act as soon as it is adopted.

Uruguay (ratification: 1954)

The Committee notes the Government's report as well as the documentation accompanying it.

The Committee takes note of the different legal texts attached to the report as well as of the arguments contained in them. However, the Committee regrets to observe that the legal texts sent with the report are, strictly speaking, irrelevant as regards the substance of the Convention.

The Committee follows the legal arguments contained in the report. However, it regrets to note that the allegation does not resolve the problem of the failure of the legislation in force to apply the Convention. The Committee agrees with the Government that "the law should be an organic or systematic whole ...". The Committee therefore reiterates that Decree No. 8.990 has a limitative effect on the provisions of Decree No. 114.982, of 24 March 1982. Section 1 of this Decree establishes that "labour clauses should be included in the relevant contracts so that the contracting parties are obliged to comply with the provisions of arbitration awards and collective agreements in force for the branch of activities". In principle, the text of section 1 of this Decree implements the provisions of *Article 2 of the Convention*, which establishes that the public contracts referred to by the Convention "shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on". Section 34 of Decree No. 8.990, of 24 January 1990, limits the provisions of above Decree No. 114.982, by only requiring the compliance by the contractor with "legal and regulatory provisions in force in labour matters". It is consequently clear that this provision fails to apply *Article 2* of the Convention.

In consideration of the provisions of *Article 2*, the Committee hopes that the Government will take the necessary measures to ensure that the legislation is a systematic, unified organic whole, thus giving full effect to the Convention.

The Committee also wishes to reiterate that international labour Conventions are not normally automatically executory and that therefore the ratifying governments must adopt the legislative or regulatory measures necessary for their application within the country concerned, independently of their automatic inclusion in the internal legal structure on ratification, under the Constitution of the country. The Committee thus

hopes that the Government will take the steps necessary to give full application to the provisions of this Convention.

The Committee is addressing a request concerning other questions related to the Convention directly to the Government.

[The Government is asked to report in detail in 2002.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Costa Rica, Denmark, Guatemala, Iraq, Jamaica, Mauritania, Saint Lucia, United Republic of Tanzania, Uganda, Uruguay.*

Convention No. 95: Protection of Wages, 1949

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls that, in its earlier requests, it referred to the comments it made in 1983 concerning the application of Convention No. 117, regarding alleged abuses in the payment of wages to agricultural workers, in the form of pay stoppages and delay in the payment of wages as a means of inducing workers to remain in agricultural establishments, and the non-payment of wages due and advances on wages, which cause indebtedness among the workers and compel them to remain in the service of landowners until their debts are paid off. These allegations were presented in August 1977 by the Anti-Slavery Society for the Protection of Human Rights to the Working Group on Slavery of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The Committee notes with regret that the Government has not supplied information in this respect. It once again requests the Government to indicate whether it has conducted investigations into the abovementioned allegations and to provide any available information. The Committee also requests the Government to provide information in accordance with Part I of the report form on the application in practice of the Convention in agriculture.

The Committee is also addressing a direct request to the Government concerning certain points.

Central African Republic (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

The Committee notes the communication received from the Democratic Trade Union Organization of African Workers, to the effect that during the period of six years public and semi-public sector workers have been paid irregularly by the Government. The Office sent a copy of this communication in October 1999 to the Government for comments. The Committee requests the Government to respond to the points raised in this communication and to provide detailed information on the practical application of Article 12(1) of the Convention (regular payment of wages), in particular in the public and semi-public sectors.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Colombia (ratification: 1963)

1. Further to its previous observation, the Committee notes the Government's reply in its report to the comments made by the General Confederation of Democratic Workers (CGDT) in April 1999, asking the Government as both an employer and a supervisory body, to respect and enforce the right to payment of wages and the trade union rights of workers in a number of municipalities, which the CGDT cites. The Committee notes the Government's comments in response to the CGDT's allegations that wages were improperly withheld or were unpaid. The Government replies that each territorial entity has its own budgetary allocation for the payment of wages, which is approved by the competent authority for a given fiscal period. The Government therefore concludes that in many cases the delay in payment is due to the formalities required for the disbursement and that once the funding is approved the payment is made. With regard to the specific cases referred to by the CGDT, the Government indicates that, in the Hospital San Francisco de Asís in Quibdó, although the employees were on strike the Chocó administrative health department and the unions reached an agreement whereby the manager of the State Social Enterprises (ESE) is to pay all outstanding wages from the efficiency agreement surplus before July 2000. In its reply the Government refers in detail to each of the municipalities mentioned by the CGDT (Ibagué and Arauca) and others which were not mentioned by the CGDT (Putumayo, Sucre, Meta, Quibdó and Caicedonia). However, the Government mentions neither the municipality of Montevía nor the department of Córdoba. The Committee asks the Government to continue to provide information on the situation in the various municipalities and departments with regard to the payment of wages, and on the practical measures taken to remedy the non-payment of wages in the public sector referred to by the CGDT.

2. With reference to its previous observation, the Committee notes the Government's response in its report to the comments by the Union of Colombian Textile Workers (SINTRATEXIL) dated August 1999 concerning the non-payment of wages and the dismissal of unionized workers. The Committee notes the Government's statement that on 24 November 1999 an agreement of reconciliation was reached on wages between SINTRATEXIL and the legal representative of the company TEXTILES RIONEGRO, in which the latter undertook to pay the wages outstanding. It also notes that TEXTILES RIONEGRO was fined for withholding two weeks' wages, 50 per cent of the 1999 end-of-year bonus, the family allowance and the bonus for the period June to December of the year.

3. The Committee notes the information supplied by the Government concerning the authorities in charge of enforcing the legislation. It notes that Decree No. 1128 of 29 June 1999 restructuring the Ministry of Labour and Social Security provides, in section 17, for the establishment of a labour inspection, supervision and control unit. The unit is responsible for coordinating, developing and evaluating all activities relating to prevention, inspection, supervision and control throughout the national territory. It also has the authority to establish mechanisms, procedures and instruments to ensure that regulatory standards on the individual and collective rights of workers are observed in both the public and the private sectors.

4. The Committee notes the comments by the Union of Maritime and River Transport Industry Workers (UNIMAR), received in February 2000, concerning non-compliance by the Government with *Article 12* (payment of wages at regular intervals).

and 11 (bankruptcy or judicial liquidation) of the Convention. UNIMAR mentions in particular that payment of the sailors of the Grancolombia Merchant Fleet, which belongs to the Coffee Producers' Federation, has been suspended. UNIMAR asserts that the sailors have been deprived of their wages for 30 months and that, despite being fined by the Ministry of Labour, the company has not resumed payment of their wages. It adds that the company intends to go into liquidation, which means that the sailors will lose all possibility of being paid their wages. The Committee notes that, although this comment was sent to the Government in March 2000 for any comments which it deemed relevant, the Government's report received in October 2000 contains no reply to the issues raised by UNIMAR. The Committee urges the Government to take the necessary concrete measures to ensure that the workers referred to by UNIMAR receive their wages at regular intervals in accordance with Article 12 of the Convention, and to ensure also that they are treated as privileged creditors in the event of the judicial liquidation of the company, pursuant to Article 11.

5. The Committee also notes the new comments by the Union of Maritime and River Transport Industry Workers (UNIMAR), received in June 2000, concerning Article 11 (bankruptcy or judicial liquidation) of the Convention, asserting that the liquidation plan for the Grancolombia Merchant Fleet is in breach of section 157, superseded by section 36, of Act No. 50 of 1990 concerning the order of priority of credits for wages, social benefits and workers' compensation. UNIMAR states that, under the said liquidation plan, the privileged creditors, such as workers and pensioners, are relegated to second place. The Committee asks the Government to provide information on the practical measures taken to give effect to this provision of the Convention, and more specifically to state where, in the order of priority of privileged credits, wages rank in relation to the other privileged credits.

6. The Committee notes the comments by the World Federation of Trade Unions (WFTU) and the Yumbo subdivision of the National Union of Chemical Industry Workers of Colombia (SINTRAQUIM), sent to the Government in July 2000, alleging non-observance of Article 12, paragraph 2, of the Convention. The above organizations state that American Home Products International, the parent company of the multinational Whitehall Robins Laboratories Ltd., had decided to close down production in the Yumbo and Bogotá plants owing to their high cost and to transfer them to Mexico. It therefore proposed to the workers that they come to a "voluntary agreement" to terminate their contracts, offering them 100 per cent compensation and assuring them that it had the support of the Ministry of Labour. The organizations add that the workers were pressured to accept the transfer; if they refused, they would be dismissed without compensation. The Committee observes that in its report of October 2000 the Government makes no reference to these comments. The Committee reminds the Government that according to this Article of the Convention, "wages shall be paid regularly" and "upon the termination of a contract of employment, a final settlement of all wages due shall be effected". It therefore urges the Government to consider the observations made by the workers' organizations, to make any comments it deems fit and to take the necessary practical measures in the near future.

7. The Committee notes the comments by the Union of Public Employees of the Medellín subdivision (SINDESENA) sent to the Government on 8 November 2000. The Committee hopes that the Government will send its comments at the same time as its report on the measures taken to protect the wages of these workers.

[The Government is asked to report in detail in 2002.]

Comoros (ratification: 1978)

The Committee notes the comments sent by the Union of Autonomous Comoran Workers' Organizations (USATC). In its comments the USATC indicates that the employees of the State of Grand Comore and the Island of Mohéli were not paid their wages for 20 months for the period from 1995 to 2000, and that the pay of employees in Anjouan is 30 months in arrears. The USATC adds that, furthermore, there have been reductions in the wages still owed to them under the injunctions of the IMF and the World Bank, that job promotions have been frozen for more than six years and that some employers do not establish payslips for their employees. The Committee also notes that, according to the USATC, the practice of paying wages late is now affecting the private and semi-public sectors, where delays of three to four months have been noted. The USATC further indicates that the Memorandum of Understanding of 20 May 2000 on the payment of wage arrears concluded between the Government on the one hand and the National Union of Comoran Primary School Teachers (SNIC) and the National Union of Comoran Teachers (SNCP) on the other remains a dead letter.

The Committee notes the Government's reply to its previous observation and to the USATC's comments on the Memorandum of Understanding of 20 May 2000 concerning the payment of wage arrears.

With regard to the wage arrears, the Committee notes the Government's statement that for economic reasons, the regular payment of the wages of all Comoran workers is far from being achieved and that the unpaid wages have therefore accumulated over the years. The Committee nonetheless notes that the Government intends to find a proper solution in order to reimburse the arrears and pay wages regularly, both in the public service and the private sector, as soon as the economic constraints have disappeared.

Regarding the Memorandum of Understanding on the payment of wage arrears, the Committee notes the Government's statement that the purpose of the Memorandum was not to pay wage arrears but to give tenure of post to certain primary school teachers and to pay two months' wages, the first part of the payment having been honoured by the prescribed date.

While noting the country's economic difficulties, the Committee urges the Government to take the necessary measures to resolve the problem of the payment of arrears in the light of *Article 12 of the Convention*. The Committee asks the Government to send a detailed report on the measures adopted to solve the above problem for examination by the Committee at its next session.

[The Government is asked to report in detail in 2001.]

Congo (ratification: 1960)

The Committee recalls that, following the adoption of the report of the Committee set up to examine the representation made by the Trade Union Confederation of Congo Workers (CSTC) (268th Session of the Governing Body, March 1997), the Governing Body invited the Government to supply detailed information on: (i) the regular payment of the wages of public officials and workers in public or state-owned enterprises; (ii) the payment of the arrears of wages for the period 1992-96, including details of the number

of employees concerned, the nature and amount of the wages owed, and the number and nature of the administrations and enterprises concerned in the non-payment of wages for that period as well as the amount of payment already made; (iii) the implementation – or otherwise – of the proposal made by the Government in April 1994 to ensure the payment of wages due and on the methods of reimbursement of arrears; and (iv) the final settlement of all sums due not only to the officials whose case has been submitted to the Administrative Appeals Committee but also to the workers of public or state-owned enterprises that have closed down.

In its report, the Government states that: (i) concerted measures to reduce wages and benefits in proportion to the reduction in working time have made it possible to re-establish the regular payment of wages of officials and other employees in public enterprises covered by the state budget, but the Government indicates that, due to the war which occurred in the country in 1997, it is not managing to pay the wages of public officials regularly; (ii) the wages due for the period between 1992 and 1996 in the public service, which were going to be paid progressively as from 1997 as a function of the availability of funds, have unfortunately not been paid. It also indicates that all public officials active during that period, as well as officials in public enterprises covered by the state budget, are affected by these arrears; (iii) the payment of wages due is safeguarded by arrears being taken into account in the internal debt of the State. Reimbursement will be made in part in cash, and the rest by issuing vouchers which may be presented at the cash desks of the public Treasury for payment; (iv) the Government has not yet completed its examination of the conclusions of the Administrative Appeals Committee on the issue of the irregular public officials struck off the public service register. Former workers in public enterprises or enterprises owned by the State which have been closed regularly receive from the State the sums due in payment of their entitlements.

The Committee notes this information and requests the Government to take the appropriate measures to resolve as rapidly as possible the situation with regard to the irregular payment of the wages of state employees, and to pay the wages due for the period between 1992 and 1996 in the public service.

Furthermore, the Committee recalls that it requested the Government to indicate the measures taken to ensure the payment of the sums due to employees of COMILOG, thereby giving effect to the recommendations adopted by the Governing Body with regard to the representation made by the International Organization of Energy and Mines (OITEM) (265th Session of the Governing Body, March 1996). In reply to the request made by the Committee in its observation of 1997, which was repeated in 1998, the Government states that, in view of the socio-political events in the country, it was unable to follow up this matter with due attention. The Committee hopes that the Government will soon be in a position to take measures intended to enable former employees of COMILOG to recover promptly all sums due to them. The Committee requests the Government to provide all available information on the measures adopted to ensure the recovery of the sums due to these workers.

Costa Rica (ratification: 1961)

I. The Committee notes the observations made by the Transport Workers' Union of Costa Rica (SICOTRA) and the Union of Employees of the Ministry of Finance

(SINDHAC), forwarded to the Government on 11 September 2000, and those made by the Confederation of Workers Rerum Novarum (CTRN), forwarded to the Government on 22 September 2000, in relation to the failure to comply with *Article 8*, principally, and also with *Articles 9 and 14 of the Convention*. The above organizations indicate in particular that workers in certain public transport enterprises have their wages reduced in a systematic manner. The owners of these enterprises deduct wages to compensate for losses caused by the malfunctioning of the system for the electronic registration of users of the above services and for breakdowns suffered by the vehicles, or traffic accidents. Such deductions are practised with a view to workers being able to keep their jobs. The Committee requests the Government to provide information on these issues, with reference to the wage protection provisions set out in *Article 1* (definition of the term "wages"), *Articles 8 and 9* (deductions from wages) and *Article 14* (information on the particulars of wages) of the Convention, and it hopes that the Government will take the necessary measures to ensure compliance with this Convention.

2. The Committee also notes the observations made by the Union of Employees of the Ministry of Finance (SINDHAC), forwarded to the Government on 29 September 2000, concerning the failure of the Government to comply with *Articles 3, 5 and 6* of the Convention. The above organization indicates in particular that workers do not receive wages for the overtime hours worked. It adds that, for the work performed outside normal working hours, they are compensated in free time.

3. The Committee recalls that in its previous comment, with reference to an observation made by the Confederation of Workers Rerum Novarum (CTRN) concerning the failure to comply in particular with *Article 12, paragraph 1* (regular payment of wages), it requested the Government to provide information on the measures taken to ensure compliance with the provisions of the Convention in the road transport sector, including for example extracts of official reports and records of inspections. The Committee notes that the Government has not yet provided any information in this respect and therefore requests it to do so in its next report.

4. The Committee is bound to express its concern at the Government's repeated silence in relation to the observations made by workers' organizations. In this respect, the Committee recalls that the Government did not provide the information requested in its previous direct request concerning the observations made by the Association of Customs Officers (ASEPA).

5. The Committee therefore hopes that the Government will soon provide detailed information on the various observations made by the above workers' organizations.

6. Furthermore, the Committee regrets to note that the Government's report does not contain any specific reply to its previous comments. It therefore urges the Government to provide information on the following matters which it has been raising for some years.

Article 3, paragraph 1, of the Convention. For several years, the Committee has been requesting the Government to adopt the necessary measures to resolve the incompatibility between the wording of section 165(3) of the Labour Code, which provides that coffee plantations may provide workers, in place of cash, with any representative token of the currency, provided that its conversion into cash is verified within a week of it being issued, and this Article of the Convention, which provides that wages payable in money shall be paid only in legal tender, and that payment in the form

of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited. The Committee considers that, even though the intention of the above section of the Labour Code is to contribute to controlling the amounts paid to workers in the above plantations, as indicated by the Government in its previous reports, and despite the Government's expressed intention to repeal the section as a whole, this provision is not sufficiently clear and precise to comply with the requirements of this Article of the Convention. Having noted once again that the wording of section 165(3) has not undergone any amendment, the Committee requests the Government to make every effort to amend this provision of the Labour Code so as to bring it into conformity with the Convention.

Article 4, paragraph 2. With regard to the adoption of appropriate measures to ensure that allowances in kind are appropriate for the personal use of the worker and his family, and that the value attributed to them is fair and reasonable, as provided in this Article of the Convention, the Committee once again notes that the Government's last report still fails to mention the adoption of the regulations envisaged under section 2 of Decree No. 11324-TSS respecting the evaluation of allowances in kind. The Committee therefore urges the Government to take the necessary measures in the near future to complete the preparation of the draft regulations and to proceed to their adoption.

[The Government is asked to report in detail in 2001.]

Côte d'Ivoire (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

With reference to its previous comments, the Committee recalls that it noted the comments of the Trade Union International of Chemical, Oil and Allied Workers (communicated by a letter of 9 March 1988), on the application of *Article 12, paragraph 2, of the Convention*. These comments allege that workers who are members of the Union of Offshore and Onshore Workers of Côte d'Ivoire (SYNTRAOFFCI), who were recruited by intermediary companies on behalf of oil companies, did not receive certain amounts owed as a final settlement of all wages due upon termination of their contracts in 1984.

In its report the Government indicates that after fruitless attempts at an out-of-court settlement, first by means of an ad hoc committee set up for the purpose, then before the Labour Tribunal of Abidjan, two judicial decisions on the matter have now been handed down: the first by the Abidjan Labour Tribunal (on 25 February 1986), and the second by the Chamber for Social Affairs of the Abidjan Court of Appeal (on 24 June 1988). The Government further states that the companies involved in this matter have now disappeared from the territory of Côte d'Ivoire and that SYNTRAOFFCI has now been split into two separate unions, whose present leaders know nothing of the matter and have taken no steps to execute the Court of Appeal's decision. The Government considers that action on its part is therefore not required.

The Committee takes due note of this information. It notes that the above-mentioned decision handed down by the Court of Appeal (24 June 1984) orders the company SOAEM-CI to pay certain amounts as a final settlement of all entitlements due to 11 workers who were dismissed owing to the "ivorization of jobs". The Committee asks the Government to indicate whether this decision has been executed and whether there have been any other judicial decisions on this matter.

The Committee also asks the Government to indicate the general steps taken to ensure the application of the Convention in situations similar to that of the offshore workers

recruited by intermediary companies, particularly as regards final settlements upon termination of work contracts (*Article 12, paragraph 2*), the information given to workers on wage conditions (*Article 14(a)*) and the definition of the persons responsible for compliance with laws and regulations on the payment of wages (*Article 15(b)*).

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Dominican Republic (ratification: 1973)

The Committee notes the information provided by the Government in reply to its previous comments. The Committee notes that since it made its previous comments the situation of the sugar plantations owned by the Dominican State (State Sugar Board) has changed. The plantations have been leased to private enterprises, which have been managing the plantations and recruiting workers since the sugar cane harvest in November 1999. Before the tender was issued for the leasing of the plantations, the State Sugar Board terminated all the employment contracts of the persons working in the various plantations. All workers were paid for their work and fortnightly wages owed to them and workers over 60 years of age were granted the corresponding pension. The Committee also notes that the private enterprises which are currently managing the sugar plantations have concluded new employment contracts. The labour inspectorate is discharging its functions to determine the working conditions in sugar refineries and plantations, and to ensure compliance with labour standards. The Committee also notes that the private administrators of plantations have indicated their readiness to pay their workers' wages on a weekly basis, and that this practice has now been initiated, and have undertaken not to retain a proportion of the wage for payment at the end of the harvest. The Committee requests the Government to continue providing information on this new situation and on the results of the work of the labour inspectors.

The Committee welcomes the conclusion of a technical agreement between the Dominican Republic and the Republic of Haiti on 23 February 2000 determining the terms and conditions for the recruitment of their nationals. The Committee also notes that the above agreement has to be ratified by the Congresses of the countries party to the agreement. The Committee would be grateful if the Government would report on the ratification of the agreement and, in particular, on the measures taken for its application and the results achieved.

France (ratification: 1952)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

The Committee notes the observations presented by the French Democratic Confederation of Labour (CFDT), communicated by the Government with its report. First, the CFDT notes the disparity between the evaluation of benefits in kind (accommodation) fixed by the Labour Code and that established by the social security scales, which, in its submission, is causing difficulties in the presentation of pay slips in certain sectors such as hotels. Secondly, the CFDT considers that the wording of section L 143-2 of the Labour Code, which provides that wages must be paid once a month, is ambiguous since it is not clear whether the term "month" means a calendar month or a one-month period between two dates.

The Committee notes that the Government has provided no information on these observations, which the Committee discusses in a direct request.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Iraq (ratification: 1960)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

1. The Committee has been commenting on the measures to be taken following the recommendations of the tripartite committee set up to examine the representation made by the Federation of Egyptian Trade Unions under article 24 of the ILO Constitution, alleging non-observance by Iraq, *inter alia*, of the Convention (GB.250/15 25, May-June 1991), concerning non-payment of wages owed to Egyptian workers employed in Iraq, who left the country both before and after the invasion of Kuwait. In its previous observation, the Committee noted the Government's indication that the workers who left since the imposition of the embargo, which resulted in the freezing of Iraqi assets in foreign banks, received their wages in conformity with the law, with the exception of the percentage to be transferred in foreign currency. In this connection, the Government indicates in its report that, although the Off-America Bank of New York had released an amount of US\$20 million from the deposit owned by the Iraqi Rafedain Bank's Cairo Branch to cover some of the Bank's outstanding transfers, none of the suspended outstanding transfers have been paid by the Cairo Branch of the Rafedain Bank.

The Committee recalls that the above tripartite committee made recommendations in its report, which was approved by the Governing Body of the ILO, that the Government should: (i) take appropriate measures so that the number of workers involved and the amounts owed to them will be determined; and (ii) take measures necessary for the effective payment of such amounts. The Committee notes that no specific information has been received on either of these points. It is therefore obliged to repeat its hope that the Government will take all the necessary measures and provide information on them.

2. The Committee notes the copy of the Labour Movement Agreement concluded between Iraq and the Philippines, attached to the report. It notes that, under article 12 of this Agreement, the workers employed under the agreement may transfer a percentage of their income through the normal banking channels in accordance with the receiving country's instructions and regulations on foreign transfers. The Committee requests the Government to clarify up to what percentage of the income the workers are allowed to remit under this provision. It would also be grateful if the Government would supply further information on the relevant instructions and regulations on foreign transfer.

3. The Committee recalls that it has noted, in its earlier observation, section 7 of the Labour Code which prescribes the treatment of Arab workers on an equal footing with Iraqi workers in regard to the rights and duties set forth in the Code, and an Agreement between Iraq and the Philippines stipulating the reciprocal equal treatment of migrant workers and nationals. The Committee again requests the Government to supply information concerning the protection of wages of non-Arab foreign workers who are not from the Philippines.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Kyrgyzstan (ratification: 1992)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

The Committee notes the detailed information supplied by the Government in its report, including texts of relevant legislation and descriptions of the application of the Convention in practice. The Government refers in particular to difficulties in applying *Articles 4 (regulation of wage payment in kind), 7 (works stores and services), 8 (deductions from wages), 10 (attachment and assignment of wages) and 12 (regular payment of wages and the final settlement) of the Convention*. The Committee notes this information with concern and hopes that the Government will take all possible measures to overcome these difficulties.

The Committee, however, appreciates the Government's attitude about providing information on the problems it is faced with and suggests that the Government request technical assistance of the Office. It would be grateful if the Government would continue to communicate information on the measures taken or envisaged in this regard as well as on any improvement in the situation. The Committee also asks the Government to provide information on particular points raised in the request which it is addressing directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes the recent comments communicated by the International Confederation of Free Trade Unions (ICFTU) referring to nationals from Nigeria, Ghana, Niger, Chad, Gambia and Sudan. It notes that thousands of workers from Ghana and Nigeria have been forced to leave the Libyan Arab Jamahiriya, including 10,000 workers from Nigeria who were expelled without receiving the whole, or even half, of the wages owed to them. The Committee also notes that, according to ICFTU, the Government of the Libyan Arab Jamahiriya told these workers to reclaim the part of their wages still outstanding from their own Government.

In its previous observations, the Committee noted the comments communicated in 1995 by the Palestine Trade Union Federation and the International Confederation of Free Trade Unions referring to hundreds, or even thousands, of Palestinian workers forced to leave the Libyan Arab Jamahiriya without receiving the wages due to them. The Government replied that in 1995 it adopted regulations for registering and controlling foreign workers in the country and for expelling illegal immigrants. The Government also stated that, since the conclusion of the latest agreement between the Israeli authorities in the Occupied Territories and the PLO and the declaration of the establishment of a Palestinian State, Palestinians were treated in a similar manner to other nationalities in employment procedures and that contracts were not renewed on expiry. It added that all the entitlements of Palestinians working with employment permits and formal contracts were respected on expiry of their contracts, including the entitlements arising both from employment and from social security. The Committee noted, in fact, that final payments of wages concerned only workers having employment permits and formal contracts.

The Committee noted the decision made in the Conference Committee in June 1996 on the final settlement of wages due to Palestinian workers who had left the Libyan Arab Jamahiriya. The Government confirmed that, in 95 per cent of cases, all the entitlements of Palestinians working with employment permits and formal contracts had been respected on expiry of their contracts, including the entitlements arising both from employment and from social security. It added that no complaint concerning the rights of Palestinian workers had been received by the employment offices. The Government also indicated that at their 1996 meeting in Tripoli, the Palestinian Trade Union Federation, the General Federation of Producers Trade Unions and the International Confederation of Arab Trade Unions had agreed to look into the claims of Palestinian workers and make a friendly settlement. The Committee also noted the Government's intention to take all measures with a view to settling the entitlements of any worker who could show the existence of unpaid benefits.

The Committee notes with regret that once again the Government does not provide a reply to its previous comments on the measures taken to ensure the final settlement of wages on expiry of a contract, in accordance with *Article 12(2) of the Convention*, for the Palestinian workers other than those with employment permits and formal contracts. The Committee recalls once again that the Convention applies to all persons to whom wages are paid or payable, irrespective of the characteristics of their contract. It therefore requests the Government once again to inform it in its next report of all measures taken with a view to complying with the requirements of this Article of the Convention.

The Committee asks the Government to supply a precise reply to the point raised by the ICFTU.

In addition, a request regarding other points is being addressed directly to the Government.

[The Government is asked to report in detail in 2001.]

Mauritania (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

The Committee notes the Government's report, the information it supplied to the Conference Committee in June 1995 and the ensuing discussion on that occasion.

In its previous comments, the Committee referred to the conclusions in the report of the committee set up to examine the representation made by the National Confederation of Workers of Senegal under article 24 of the ILO Constitution which deals, among other things, with the application of this Convention. In the committee's said report, adopted by the Governing Body at its 249th Session (February-March 1991, *Official Bulletin*, Vol. LXXIV, 1991, Series B, Supplement No. 1), the Government is asked to take all the necessary measures with a view to a final settlement of all the wages due to the persons who were obliged to leave Mauritania following the events of April 1989, in accordance with *Article 12, paragraph 2, of the Convention*. The Committee therefore asked the Government to provide detailed information on all measures taken or envisaged to settle the above problem and the result.

The Committee notes that the Government refers again in its last report to the process of normalization of relations between Mauritania and Senegal since the reopening of the frontiers in May 1992 and to the joint commissions established to settle various issues.

Furthermore, the Government states in its report that no claim from foreign workers relating to the entitlements they were unable to obtain from their employers has been recorded by the labour administration and that any person who considers he or she has not received the entitlements may apply directly to the competent administrative or judiciary authorities.

The Committee recalls the conclusions adopted by the ILO Governing Body to the effect that, according to the Government statement and the circumstances in which the workers concerned left, it was very probable that final settlement of salary due could not be made in accordance with the relevant provisions of the Convention or of national legislation. Consequently, the Government should take all necessary measures with a view to establishing or having established the amounts due to the workers concerned and to making or having made the final settlement of wages due.

The Committee asks the Government to provide detailed information on all the measures taken or envisaged to establish the amounts due to the workers who were expelled and to make final settlement of the wages due. In particular, it requests the Government to mention any development relating to ILO technical assistance, which the Government stated to the Conference Committee in 1995 it was ready to accept, as recommended to it by the Conference Committee, with a view to settling the wages due to the workers concerned.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Republic of Moldova (ratification: 1996)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which reads as follows:

The Committee notes that the Governing Body at its 276th Session (November 1999) entrusted to a tripartite committee the examination of a representation alleging non-observance by Moldova of the Protection of Wages Convention, 1949 (No. 95), made under article 24 of the ILO Constitution by the General Federation of Trade Unions of the Republic of Moldova.

In accordance with normal practice, the Committee is postponing its comments on the application of the Convention pending the Governing Body's adoption of the conclusions and recommendations of the above committee.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Portugal (ratification: 1983)

1. The Committee notes the full information provided by the Government in its report in reply to the Committee's previous comments.

With reference to its previous observations concerning the arrears and non-payment of wages to workers in certain enterprises, the Committee notes the detailed information provided in the 1998 report on labour inspection. The Committee notes the positive trend respecting wage arrears in the country, taking into account developments between 1986 and 1998, and hopes that the Government will continue providing information in the future.

In its previous observations, the Committee had noted that the concept of "basic pay" used by Act No. 17/86 is a more limited concept than that set out in *Article 1 of the Convention*. In this respect, the Committee requested the Government to provide

information on the measures which guarantee the payment of components of remuneration other than basic pay. The Government indicates that the general protective measures envisaged in Act No. 17/86 relate to all the components of remuneration, and that this term is broader than the expression "basic pay". It also refers to section 82 respecting the legal status of individual employment contracts, annexed to Legislative Decree No. 49408 of 24 November 1969, which provides that "remuneration includes basic pay and any other regular or periodic benefit paid directly or indirectly in cash or in kind", with the clarification in subsection 3 that "without proof to the contrary, remuneration shall be considered to be any benefit provided by the employer to the worker". The Committee also notes that the protection set out in Act No. 17/86 covers benefits by way of compensation, such as paid holiday and other benefits, but that maternity leave is not included as it is not an obligation borne by the employer.

2. The Committee notes the observations made by the General Confederation of Portuguese Workers (CGTP-IN).

In the first place, the CGTP-IN regrets the existence of temporary work enterprises which charge workers for finding them a job, which is contrary to *Article 9* of the Convention. In its reply to the observations made by the CGTP-IN, the Government does not refer to this issue and the Committee therefore requests the Government to provide information on the measures taken to prohibit any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining employment made by a worker to an employer, as provided in this Article of the Convention.

The CGTP-IN also states that the Government should intensify its inspection activities in relation to compliance with labour legislation, which would reduce abuses involving failure to comply with the provisions of the Convention. In its reply, the Government indicates that it has invested in the recruitment of new labour inspectors over the past four years (the employment of some 100 inspectors), which would give grounds for assuming that there is an improvement in the quality and quantity of inspection activities. The Committee notes this information and requests the Government to continue providing information on this matter.

The CGTP-IN's second observation relates to cases of abuse concerning the payment of wages in kind to certain categories of workers with the principal objective on the part of the enterprises concerned of evading their social obligations and, in particular, the payment in full of taxation and social security contributions. The CGTP-IN states that, in order to resolve this situation, the Government should adopt appropriate rules respecting taxation and social security and control such practices more closely. In its reply, the Government states that the Act approving the general budget of the State for 2000 included fiscal measures intended to promote more appropriate practices in enterprises. Furthermore, at the level of the public administration, concerted action has been taken involving the tax authorities, social security and the labour inspectorate to improve inspections, which it is planned to intensify in future. The Committee recalls that *Article 4* provides for the possibility of the partial payment of wages, but not their total payment, in the form of allowances in kind in certain industries or occupations, and it requests the Government to continue providing information on the measures taken and the efforts made to achieve greater control over such payments.

The CGTP-IN's third observation relates to arrears in the payment of wages. The CGTP-IN admits the improvement in the situation as a result of economic growth in

recent years. Nevertheless, the CGTP-İS adds that official data are far from reflecting the real situation, since they are based on data obtained following labour inspections, which cannot be considered to constitute statistics on this matter. The Government replies that, as recognized by the CGTP-İS, there has been a positive trend in the reduction of arrears in the payment of wages. It also refers to the credit guarantee mechanism established by Act No. 219/99, of 15 June 1999, respecting the Wage Guarantee Fund, to which workers can have recourse when they are the victims of wage arrears. The Government adds that the protection of wages is a priority for the General Labour Inspectorate, which had developed methods of intervention in cooperation with the social partners. The Committee notes these explanations and requests the Government to continue providing information in its next report.

Turkey (ratification: 1961)

The Committee takes note of the information contained in the Government's report as well as the comments made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Confederation of Turkish Employers' Associations (TİSK). The Committee will analyse in detail at its next session the comments of the abovementioned employers' and workers' organizations, together with the response of the Government.

The Committee states, however, that the Government's report does not reply to the questions raised in its previous comments. The Committee, therefore, is bound to reiterate its previous observation, which reads as follows:

The Committee has been commenting on the application in practice of the provisions, and in particular *Article 12 of the Convention*. It notes that the Government's report was received on 4 November 1998 with comments made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and by the Confederation of Turkish Employers' Associations (TİSK). The comments from TİSK dated 24 June 1998 are in Turkish and would seem to mention the need for tax reform so as to protect wages. The Committee may come back to them at its next session when the complete translation has been available.

The Committee notes that TÜRK-İŞ is of the opinion (i) that wage earners in agriculture, homeworking and in small establishments of artisans and petty tradesmen are not covered by the protective legislation, and (ii) that it has been a widespread practice to delay the payment of wages and other benefits for months, due to the absence of effective sanctions and the reluctance of the victims to take action against the employer because of job insecurity.

Regarding the first point, the Committee recalls that it earlier noted the adoption of Act No. 3528 of 12 April 1989, which extended the scope of the provisions of Labour Act No. 1475, concerning the protection of wages to workers in the agricultural sector and to those in small commercial and artisanal enterprises. It asks the Government to include particular reference to workers in these sectors when supplying information on the application in practice of the Convention.

On the second point concerning the delayed payment of wages, the Committee notes the Government's indications that wage arrears observed from time to time in some municipalities irrespective of region are the results of imbalance between municipal revenues and expenditure. The Government further refers to the provisions of sections 26 and 99 of the Labour Act on the regular payment of wages and sanctions in case of violation. According to the report, during the calendar year 1997, 134 undertakings were fined by the labour inspectorate under section 26 of the Labour Act, and the total of fines

charged amounted to 11,200,000,000 for public undertakings, and 11,650,000,000 for private undertakings.

The Committee requests the Government to continue to supply, in accordance with Article 16 of the Convention and Part V of the report form, information on the application of the Convention in practice, including information on the numbers of inspections made, infringements of the relevant provisions observed and penalties imposed, as well as any statistics of the amounts of wages due, the length of the delay in payment and the workers affected.

[The Government is asked to report in detail in 2001.]

Ukraine (ratification: 1961)

The Committee notes the Government's report and the information supplied by the Government to the Committee on the Application of Standards at the Conference in June 2000.

The Committee notes that the Government's report contains no additional information to that given to the Conference Committee in June 2000, nor does it update the figures given on that occasion. The Committee nonetheless wishes to raise the following points.

Wage arrears by sector

The Committee notes the Government's indication that, thanks to coordinated efforts, the wage debt in the country has dropped considerably since the second half of last year. For the first time in four years, in January 2000 wage arrears dropped by more than 100 million grivnas (equivalent to 1.8 per cent since January 1999) and the number of employees whose wages were not paid in time dropped by 1.5 million. As to the distribution of wage arrears in the various sectors of the economy, of the total wage debt of 6,399,500,000 grivnas, 35.8 per cent was in the state-owned sector, and 64 per cent in collectively owned enterprises. The Committee notes that the largest increases in wage arrears were registered in the banking, information technology, non-productive public services, housing, commerce and fisheries sectors. The proportion of unpaid wages to total earnings taking all types of enterprises into account was 17 per cent (as opposed to 21.8 per cent in 1998).

With regard to the mining sector, the Committee notes the acute and complicated situation that emerged during the restructuring of the sector, due to long delays in the payment of wages, third party claims and lump-sum allowances. According to data supplied by the State Statistics Committee, wage arrears as of 10 January 1999 amounted to 731.7 million grivnas. It also notes the measures taken by the Government at the end of 1999 to reduce wage arrears in the sector by 6 per cent, which is equivalent to 687.5 million grivnas. In keeping with resolution No. 1699 of 15 August 1999 by the Cabinet of Ministers, the State Labour Inspectorate investigated the payment of wage arrears in kind with food and consumer goods in 69 enterprises in the mining sector and found, following its investigation, that payment of wages in kind was rare. The Committee also notes that the Government prepared a programme to reform enterprises in the sector and improve their financial situation for 2000, which was approved by resolution No. 1921 of 19 October 1999 of the Cabinet of Ministers. The programme is broad in scope and seeks to eliminate tensions arising out of wage arrears.

With regard to the agricultural sector, the Committee notes the Government's statement that the already very critical situation had been exacerbated by the restructuring of collectively owned agricultural enterprises. The Committee notes the study carried out by the Labour Inspectorate in 427 collectively owned agricultural enterprises involved in the reform. According to the Government, the original intention was to grant lands to the workers in the restructured enterprises in the sector in part payment for wage arrears. However, this actually occurred for only one worker in five, since only 40 per cent of the reformed enterprises that were investigated had legal successors, whereas 60 per cent of those remaining had outstanding legal problems and 43 per cent of the undertakings investigated failed to reach a settlement with their employees. The Committee notes the Government's statement that, in order to overcome the tensions, a reform programme has been drafted establishing that a legal successor must be designated in order to resolve wage arrears problems.

The Committee observes that, according to the Government's statement, the main reasons for the wage arrears were the country's difficult economic circumstances due principally to radical structural transformations, the privatization of state property and the transformation of the agricultural sector. According to the Government, the process of adaptation to the new conditions of the market economy was more lengthy and complex than was originally expected, so the President and Government are pursuing measures to stabilize the economy. The steady growth in gross national product and the increase in industrial output in the second half of 1999 and early 2000 illustrate that the economy is gradually stabilizing and the preconditions for a positive social environment are being created. The new Government has drawn up a programme of activities entitled "Reforms in the name of prosperity", which is the only way of creating the conditions necessary to raise the standard of living and overcome poverty.

*Monitoring the payment of wage arrears
and reform of the Labour Inspectorate*

The Committee takes note of the information supplied by the Government to the effect that top priority is given to the work of the State Labour Inspectorate of the Ministry of Labour and Social Policy. It also notes the Government's statement that the Inspectorate has focused on breaches of wage legislation, identifying their causes, preventing further breaches and prosecuting offenders. The State Labour Inspectorate is responsible for overseeing the application of the decrees and orders of the President and Cabinet of Ministers regarding the payment of wage arrears, indexation and compensation for late payment of wages. The Committee notes with interest Order No. 19508/2 of 8 August 1999 issued by the Cabinet of Ministers in response to a presidential request of 4 August 1999, in order to ensure the timely payment of wages in state-owned undertakings, to increase the volume of dividends paid on shares held by the State and to terminate the contracts of heads of enterprises who infringe labour laws. Pursuant to that Order, the State Labour Inspectorate investigated the payment of wage arrears in companies in which the State holds shares, and made some progress including payment of arrears amounting to 43.5 million grivnas, which in some undertakings constitutes full settlement of the wage debt. The Committee nonetheless notes that in most of the companies that were inspected, the State lacks a controlling influence, so the executive bodies are unable to exert a direct influence on the payment of wage arrears.

The Committee notes that in 1999 the State Labour Inspectorate monitored compliance with labour law in 29,014 enterprises, which represents an increase of 42 per cent over the previous year. In accordance with Order No. 141 of 21 August 1998 issued by the Minister of Labour and Social Policy, the Labour Inspectorate rigorously inspects all enterprises, institutions or other bodies which have accumulated wage arrears. Its efforts have led to the payment of 888.5 million grivnas, which represents 33.2 per cent of outstanding wage arrears, and a decrease in wage arrears in 17 regions of the country. Pursuant to Presidential Order No. 1-14-1834 of 29 December 1999, the Ministry of Labour and Social Policy and the Ministry of Justice drafted and submitted to the Supreme Soviet of Ukraine a bill amending the Penal Code and the Code of Administrative Offences, which was approved in the first reading, in order to increase the liability of heads of enterprises for late or partial payment of wages. The Committee also notes the Government's reference to a resolution entitled "Further measures concerning the payment of social benefits arrears out of budgets at all levels" proposing that ministries, agencies and regional authorities use additional extra-budgetary sources to pay the wage arrears of previous years, in order to maintain the current tendency towards reducing wage arrears in the public sector. The indicators currently show that the positive trend in the payment of wage arrears will be maintained in the non-budgetary sector. Presidential Decree No. 958/98 of 31 August 1998 on "additional measures for limiting artificial increases in wage arrears" contributed to this trend to a significant degree, by making it possible to slow the rate of increase in wage arrears over a period of one-and-a-half years and to reduce the wage debt across the board to 92 million grivnas (1.4 per cent). The Committee also notes the measures taken by the Government to reduce contributions depending on the amount of wages, such as the preparation of a bill to abolish primary payments to the budget, which has been submitted to the Supreme Rada of Ukraine (Parliament), which will allow enterprises to choose their own payment priorities (for example, timely wage payments ahead of other payments). Lastly, the Government indicates that, although its intention is to decrease the wage debt to an absolute minimum, 65 per cent of this debt is in the private sector. The Government is therefore making efforts to resolve the problem and is consulting the social partners.

The Committee notes the information supplied by the Government to the effect that a new governmental body, the Department of State Supervision of Compliance with Labour Legislation, is to be set up under the authority of the Ministry of Labour and Social Policy, and is to be based on the State Labour Inspectorate.

The Committee notes in particular the specific measures taken by the Government to control the increase in wage arrears, reduce the increase in wage arrears in the mining and agricultural sectors and to foster further measures governing the payment of wage arrears, allowances, pensions, scholarships and other social benefits.

However, like the Conference Committee on the Application of Standards, the Committee expresses its concern about the continued violation of the Convention and the serious situation of millions of workers in Ukraine. The Committee notes that, while in certain sectors there has been some improvement, in others the situation has become worse to the extent that the orderly functioning of the labour market is imperilled. The Committee recalls that the fundamental problem – failure to apply the Convention in practice – still persists. It therefore urges the Government to take the necessary measures to ensure effectively that wages are paid and all wage arrears are settled. It also urges the

Government to take effective measures to ensure that sanctions and redress for injury are properly enforced.

In the absence of information showing any other progress in the second half of the current year (2000), the Committee requests the Government to provide information in its next report on the payment of wage arrears, the regular payment of wages and the strengthening of the supervisory and inspection machinery.

Furthermore, the Committee notes the information supplied by the Government on existing legislation concerning *Article 3* (payment with promissory notes or coupons), *Article 4* (regulation of payment in kind) and *Article 15* (sanctions in the event of violations) of the Convention. It nonetheless urges the Government once again to provide detailed information on the measures adopted to effectively apply the provisions of *Articles 3, 4 and 15*, and *Article 11* (treatment of wages as privileged credit in the event of bankruptcy).

The Committee urges the Government to provide all the information requested both on the legislation and on the measures adopted to enforce it. The Committee again asks the Government to provide up-to-date information on the results achieved by the Inspectorate and the enforcement of penalties imposed for breach of wage protection standards.

[The Government is asked to report in detail in 2001.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Belize, Bolivia, Central African Republic, Comoros, Democratic Republic of the Congo, Dominican Republic, France, Gabon, Grenada, Guinea, Kyrgyzstan, Libyan Arab Jamahiriya, Mauritius, Niger, Nigeria, Portugal, Saint Lucia, Sierra Leone, Slovakia, Solomon Islands, United Republic of Tanzania*.

Convention No. 96: Fee-Charging Employment Agencies (Revised), 1949

Syrian Arab Republic (ratification: 1957)

The Committee notes the Government's report and the information it contains in response to its previous observation. It notes the information that the Ministry of Social Affairs and Labour has undertaken to prepare a draft decree to amend the provisions of the Labour Code in order to bring them into line with the Convention. It notes that since 1966 the Government has regularly referred in its reports to the preparation of such a draft, but has never been able to report its adoption. The Committee therefore once again expresses the hope that the Government will very shortly be in a position to inform the ILO of progress made in respect of the following points, already addressed in previous comments.

Part II of the Convention. The Government emphasizes that there are no private employment agencies and, if there were, sections 90 and 22 of the Labour Code, which prohibit fee collection from the worker, are not contrary to the Convention. The Committee has nevertheless pointed out many times that the Convention's requirement for exemption from the payment of the fee must cover the employer as well as the

worker. It is not enough to exempt only the worker. The Committee therefore again asks the Government to repeal sections 18 to 22 of the Labour Code as soon as possible.

The Committee also requests the Government once again to amend section 11 of the Labour Code in order to extend to domestic and similar workers the application of the chapter concerning the placement of unemployed persons.

[The Government is asked to report in detail in 2001.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bangladesh, France, Malta, Sri Lanka.*

Convention No. 97: Migration for Employment (Revised), 1949

Malaysia

Subidi (ratification: 1964)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation which reads as follows:

Article 6, paragraph 1(b). In its previous comments, the Committee drew to the attention of the Government the fact that the transfer of foreign workers working in the private sector from the Employees' Social Security Scheme (ESS) to the Workmen's Compensation Scheme was not in conformity with this provision of the Convention. A review of the two schemes had in fact shown that the level of benefits in case of industrial accident, provided under the ESS, is substantially higher than that provided under the Workmen's Compensation Scheme. In this respect, the Committee notes with interest that the Government has reported that it is now contemplating a review of the present situation regarding the coverage of foreign workers under the ESS and that it is proposing amendments to the Social Security Act of 1969 in this regard. The Committee hopes that in its next report the Government will be able to indicate the progress made in amending the Social Security Act in order to ensure that foreign workers will receive an equal benefit, including workmen's compensation benefits, to that paid to nationals, in conformity with this provision of the Convention. Please supply copies of the proposals made or the amended law, if adopted, in its next report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Nigeria (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the massive expulsion measures taken against Chadian workers, including migrant workers of Chadian nationality.

According to the information disseminated by the International Federation of Human Rights (FIDH), a large number of the Chadian nationals who were arrested and then expelled were migrant workers, in possession of valid residence permits. The FIDH considers that the massive deportation of non-nationals, particularly to a country in which there may be a risk of human rights violations, is rigorously prohibited by international

human rights instruments, including the African Charter of Human and People's Rights, which was ratified by Nigeria in 1990.

The Committee recalls in this respect the provisions of the Migration for Employment Recommendation (Revised), 1949 (No. 86), which supplements the Convention and states in paragraph 18 that when a migrant for employment has been regularly admitted to the territory of a Member, the said Member should, as far as possible, refrain from removing such person from its territory on account of his lack of means or the state of the employment market. Moreover, account should be taken of the length of time the migrant has been in the territory of immigration and the migrant must have been given reasonable notice so as to give him time to dispose of his property. Finally, the necessary arrangements have to have been made to ensure that he and the members of his family are treated in a humane manner.

The Committee also recalls the provisions of the Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, which suggests in article 25, paragraph 2, that immigration countries which are parties to such an agreement should undertake not to send refugees and displaced persons or migrants who do not wish to return to their country of origin for political reasons back to their territory of origin, unless they formally express this desire by a request to the competent authority of the territory of immigration and the representatives of the United Nations High Commissioner for Refugees.

The Committee requests the Government to indicate the measures taken to ensure that the departure of the migrant workers concerned and the members of their families occurs in conditions of dignity which are in accordance with the above indications, as well as the measures taken under *Article 6, paragraph 1(a) and (b), of the Convention*, with a view to ensuring the final payment of the remuneration due to these workers who are legally within its territory, as well as the maintenance of their acquired social security rights.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Saint Lucia (ratification: 1980)

The Committee notes with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which reads as follows:

Noting that, with technical assistance from the Office, several pieces of model legislation have been completed as part of the CARICOM labour legislation harmonization project, the Committee looks forward to receiving from the Government, in its next report, an indication as to whether it intends taking measures to give legislative effect to the Convention, as it had indicated in its 1991 report (the most recent received by the Office). Hoping that a report will be supplied for examination by the Committee at its next session, the Committee recalls that its previous direct request had also requested information on the practical application of the Convention, as provided for in the report form adopted by the Governing Body of the ILO.

Spain (ratification: 1967)

1. The Committee notes the communication from the Democratic Confederation of Labour (CDT) of Morocco dated 29 February 2000 alleging violation of the following Conventions: Migration for Employment Convention (Revised), 1949 (No. 97); Social Security (Minimum Standards) Convention, 1952 (No. 102); Discrimination

(Employment and Occupation) Convention, 1958 (No. 111); Minimum Wage Fixing Convention, 1970 (No. 131); and Occupational Safety and Health Convention, 1981 (No. 155). The Government has transmitted to the Office its reply to this communication as well as its report on the application of the present Convention. The Committee will limit its examination in this comment to the allegations regarding application of Convention No. 97 and refers to its comments on application of the other abovementioned Conventions.

2. The CDT communication concerns the events which occurred in February 2000 in the town of El Ejido (province of Almería, autonomous region of Andalucía) during which the Moroccan workers of the town, along with the members of their families, were violently set upon, attacked and assaulted (houses set ablaze, shops pillaged, mosques destroyed) by the inhabitants of the town. According to the CDT, these events took place in the presence of the forces of law and order and the local authorities who were the silent, passive witnesses of this drama for 24 hours. It recalls that similar events occurred in summer 1999 at Terrassa (Catalonia) and that the attackers were never prosecuted and expresses the fear that, in this case also, the attackers will not be prosecuted. The CDT also draws attention to the living and working conditions of Moroccan workers in this town. Most of the migrant workers are employed in the agricultural sector, more especially in greenhouses where the temperature reaches 50 degrees Celsius and the use of pesticides causes workers to suffer from lung and skin diseases; their wages are lower than those paid to nationals and do not guarantee the minimum daily living wage; they are generally not insured or even declared and therefore have no medical or social cover, and finally, they are accommodated in ghettos, or makeshift cardboard carton or plastic shelters which are not resistant to rain or sun. The CDT affirms that the working conditions described above constitute discrimination and treatment which contravenes *Articles 3 and 6 of the Convention*.

3. According to the CDT, after the events which occurred at El Ejido, the Moroccan workers went on strike which led to the conclusion of an agreement on 12 February 2000 under which the various protagonists – central Government, autonomous government of Andalucía and employers' and workers' organizations, undertook: (a) to rehouse and compensate the immigrants who had suffered damage and loss during the incidents; (b) to establish a social housing construction programme; (c) to regularize the situation of those without papers, in the framework of the coming regularization process; (d) to carry out an in-depth investigation of the events; (e) to set up immigrant reception offices in the various town halls in the province; (f) to publicize with their affiliates the need to comply with the agricultural Convention and to establish a liaison committee between the representatives of migrant workers who signed the agreement and the trade union organizations which have signed the abovementioned agricultural Convention; (g) to develop inter-cultural programmes to encourage better integration of immigrants; and (h) to establish a permanent commission composed of signatories of the agreement that will meet at least twice a month.

4. The Committee notes that the Trade Union Confederation of Workers' Committees (CC.OO.) in its comment on the application of the present Convention, appended to the Government's report, considers that the events at El Ejido show clearly the difference in treatment suffered by foreign workers and invites the Committee of Experts to follow closely the effective application of the provisions of the Convention.

5. In its reply dated 22 September 2000, the Government states that, contrary to the allegations made by the CDT, the forces of law and order tried from the outset to maintain the peace and to prevent confrontations between the members of the different communities, in a very tense atmosphere, and that 82 persons were arrested in the hours following the onset of the riots. It affirms that the Moroccans in El Ejido, like all the other foreign workers, have the same rights as Spanish workers in regard to employment since it is the same labour law, social security law and even the same collective agreements which are applied to them. The Government recalls that, in addition, there is a bilateral agreement between the Spanish and the Moroccan authorities (dated 8 November 1979) which reaffirms, *inter alia*, the principle of equality of treatment between the nationals of the two countries. The Government recognizes that working conditions in the greenhouses and exposure to pesticides make this work particularly arduous but states, first, that Spanish workers and *all* foreign workers are subject to the same working conditions and, secondly, that *all* foreign workers and Spanish workers are equally protected by the pertinent legislation on occupational safety and health and that failure to use personal protection equipment can be denounced to the labour inspection service of the province or to the labour court.

6. In regard to application of the agreement signed on 12 February 2000 between the workers concerned and the workers' and employers' organizations of the province of Almería, it indicates that at its meeting of 10 April 2000 the permanent commission established by that agreement recognized that in general the agreement was being implemented even though some points were pending, and decided to dissolve itself and to charge the office for social integration of immigration in the province of Almería to follow these matters closely. The Government then details the measures taken to apply this agreement in regard to rehousing the workers whose homes were destroyed (42 living units have been installed with a capacity to accommodate 300 people), the construction of new homes or the rehabilitation of decent housing for migrant workers, compensation for material loss (100 million pesetas released and 232 applications handled to date), the regularization of most of the migrant workers in an illegal situation (Moroccan or other), the effective application of the collective agreement for agricultural workers, the role of the labour inspection service and the judicial inquiry into the event that took place at El Ejido. The Government concludes by emphasizing that the necessary urgent measures have been undertaken and that the financing of medium- or long-term measures such as those concerning housing or family reunification of migrant workers, is under examination.

7. *Articles 3 and 6 of the Convention.* According to the CDT, the Spanish authorities have failed in their duty by not combating misleading propaganda relating to emigration and immigration, particularly by allowing the mayor of El Ejido to make xenophobic declarations and false information to be spread in regard to foreigners. It also records a rise in xenophobia, racism and intolerance. The Committee recalls that, under the terms of *Article 3*, any State for which the Convention is in force undertakes to take all appropriate steps against misleading propaganda relating to emigration and immigration. *Article 6*, on the one hand, preaches non-discrimination in respect of nationality and race, *inter alia*, and, on the other hand, prohibits inequality of treatment between migrant workers who are legally on the territory of the State and national workers which could result from the legislation and practice of the administrative

authorities in four chief spheres: living and working conditions, social security, employment taxes and access to legal proceedings.

8. The Committee wishes first to emphasize that although the campaign against misleading propaganda applies chiefly to the protection of workers against any recruitment based on false representation of the real situation, it must also relate to nationals themselves and thus to the campaign against the propagation of stereotypes about foreigners (see paragraph 217 of its 1999 General Survey on migrant workers).

According to the report of the European Commission against Racism and Intolerance (ECRI) prepared in 1998, in Spain there are signs of rising racism against certain groups of immigrants from the third world, especially those from the Maghreb (which is the largest group of non-European immigrants and is increasing rapidly), which results in acts of violence of a racist nature and hence North Africans are the victims of discrimination on the labour market. The Committee notes that in its report to the United Nations Committee on the Elimination of Racial Discrimination (CERD/C/338 Add.6, paragraphs 6-9) the Government does not deny the existence of a certain racism in Spanish society. It explains that there are two main hotbeds of racism and xenophobia: the organized skinhead movement which exists in the large towns and workers' claims in the social problems context. In the latter case, the Government is facing more spontaneous demonstrations which take on a racist colouring in that the issue of the situation of migrants is almost always involved. The problems raised are most often linked more or less directly to employment.

9. In this regard, the Committee notes that Act No. 7/95 on the rights and freedoms of foreigners in Spain has been repealed and replaced by Act No. 4/2000 (of 11 January 2000) on the rights and freedoms of foreigners in Spain and their social integration of which the main purpose is to guarantee equality of treatment between nationals and foreigners who are lawfully present on Spanish territory, with a view to better social integration of this category of the population. The Committee notes, however, that the implementing decree for this Act has not yet been enacted and that discussions are currently in progress within the Government on the need to amend the Act; it would therefore be grateful if the Government would keep it informed on any legislation revision in this regard. It notes, also, the many initiatives taken by the Government to inform the public through the media (television, video clips, brochures); by the inclusion of courses on respect for human rights and diversity in school curricula; on education in tolerance and solidarity in teacher training; on human rights in police training courses; by support for the initiatives of non-governmental organizations and various associations, etc. It would be grateful if the Government would indicate whether it conducts periodic assessment of the impact of these measures which would permit it to adapt its policy during the implementation process to make it more effective. In any event, it requests the Government to continue to keep it informed on measures taken to combat the propagation of stereotypes on foreigners, and on the results obtained.

10. According to the CDT, *Article 6* is not applied in that the equality of treatment advocated by the Convention in certain of the matters listed in this Article is not applied in practice in regard to remuneration, accommodation and social security (see paragraph 2 above). The Committee notes that the Government refutes these allegations in regard to remuneration and social security, claiming that foreign workers lawfully present are subject to the same legal provisions as Spanish workers, with some exceptions. The

Committee considers that the question raised by the CDT in its communication concerns more the *effective* application of these provisions than the existence of discriminatory standards. It notes the statistics communicated by the Government concerning the number of violations recorded by the inspection service for labour and social security relating to foreign workers between 1994 and 1999 which rose from 1,990 to 2,952 cases. Nevertheless, these statistics are general and do not permit identification of the type of violation most frequently noted. It therefore requests the Government to indicate to what extent the national and local authorities responsible for the application of social legislation supervise application of this legislation to foreign workers – on an equal footing with Spanish workers – especially in regard to remuneration and social security. It would be grateful if the Government would supply a copy of judicial rulings concerning application of the Convention on this matter. Finally, the Committee requests the Government to indicate the measures taken or envisaged to guarantee that the incidents of racial discrimination are effectively described as such and to establish reliable statistics on the number of complaints made for racially motivated offences and similar offences, the inquiries to which they give rise and the penalties actually imposed on persons recognized as guilty.

11. The agreement signed on 12 February 2000 between the migrant workers who were victims of brutality, the central and autonomous Governments and the workers' and employers' organizations show that there is a structural problem of housing migrant workers in this town – in addition to the problem confronting the authorities when they had to rehouse urgently the foreigners whose homes had been destroyed, following the events at El Ejido. It notes in fact that both the central Government and the autonomous government of Andalucía have undertaken to implement a social housing programme for foreign workers and construction of inns for temporary and unmarried migrants. It therefore notes with some concern the statement by the Government to the effect that the construction or rehabilitation of housing for foreigners, resident or temporary, is subject to the authorities concerned finding the necessary funding. The Committee is aware of the fact that in a context of reducing public expenditure, financing of such programmes is difficult because, although the saving thus realized is immediately visible, the social cost in the medium or long term of the failure to construct this housing is more difficult to evaluate. Experience shows, however, that the social exclusion of part of the working population is always costly in the medium and long term. It requests the Government to keep it informed of the progress of this programme.

12. The Committee notes that a judicial inquiry is in progress on the events which occurred at El Ejido and trusts that the Government will keep it informed of the conclusions reached by the judicial authorities at the conclusion of this procedure. It notes, however, that in its report to the United Nations Committee on the Elimination of Racial Discrimination (CERD/C/338/Add.6, paragraphs 5-10), the Government indicates that in judicial proceedings against the perpetrators of acts of violence against foreigners, the complaints are most often confined to physical violence, illegal detention and material damage and that the racist connotation of such acts is not sufficiently taken into consideration. That would explain the remarkably low number of incidents of discrimination based on race reported, despite the steep increase in acts of violence committed against foreigners noted by the Ombudsman.

13. The Committee notes that the Government's report remains silent once again on the measures taken to avoid the recurrence of incidents of the type that led to the

disappearance of three Moroccan migrants during a police operation on 18 July 1993 which was conducted to repatriate immigrants with false papers. It therefore reiterates its request for information on the measures taken to facilitate the departure, journey and reception of migrant workers, in accordance with *Article 4* of the Convention.

14. Please refer also to the comments made on Conventions Nos. 102, 111, 131 and 155.

15. The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to report in detail in 2001.]

Zambia (ratification: 1964)

1. For several years, the Committee has been emphasizing the need to amend the Second Schedule to the Zambia National Provident Act in order to ensure to *all* foreign workers lawfully within the territory, and not only to those residing permanently, treatment that is no less favourable than that which is applied to its nationals in respect of social security, in accordance with *Article 6, paragraph 1(b), of the Convention*. The Committee notes the information that Act No. 40 of 1996 respecting the national pension scheme has transformed the National Provident Fund into a national pension scheme, which became operational on 1 February 2000. The Committee regrets that the Government has not indicated in its report whether or not this new Act has taken its comments into account and that it has not provided a copy of the above Act. The Committee also notes that the ILO technical assistance project in the field of social security has come to an end. The Committee would be grateful if the Government would provide a copy of Act No. 40 of 1996.

2. The Committee is addressing a request directly to the Government on other matters.

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Bahamas, Barbados, Burkina Faso, Cameroon, Cuba, Dominica, Germany, Grenada, Guyana, Jamaica, Kenya, Malawi, Norway, Spain, Trinidad and Tobago, Venezuela, Zambia.*

Convention No. 98: Right to Organise and Collective Bargaining, 1949

Australia (ratification: 1973)

The Committee takes due note of the information provided by the Government concerning a number of decisions of the Federal Court and the Australian Industrial Relations Commission which have interpreted provisions of the Workplace Relations Act, in particular regarding anti-union discrimination. The Committee will address the issues raised therein, as well as the other pending issues next year when it receives the Government's full report. The Committee requests that the Government continue forwarding relevant decisions of the courts and the Commission.

Bangladesh (ratification: 1972)

The Committee notes the information provided by the Government in its report.

The Committee's previous comments referred to discrepancies between national legislation and the Convention on the following points:

- obstacles to voluntary bargaining in the private sector (sections 7(2), 22 and 22A of the Industrial Relations Ordinance, 1969 (IRO)). The Committee had pointed out that collective bargaining is not developed in small establishments because sections 7(2), 22 and 22A of the IRO appear to inhibit the establishment of "sectoral" or "industry" unions; it had therefore requested the Government to take the necessary steps to remove the requirements: (a) in section 7(2) that, in order to be registered under the IRO, a trade union must have a membership of at least 30 per cent of the total number of workers in the establishment or group of establishments in which it is formed; and (b) in sections 22 and 22A of the IRO that only unions which are registered in accordance with section 7 may become collective bargaining agents;

- restrictions on voluntary bargaining in the public sector (section 3 of Act No. X of 1974), in particular through the practice of determining wage rates and other conditions of employment by means of government-appointed wages commissions; lack of legislative protection against acts of interference guaranteed by *Article 2 of the Convention*;

- denial of the rights guaranteed by *Article 1* (Protection against anti-union discrimination), *Article 2* (Protection against acts of interference), and *Article 4* (Right to bargain collectively) of the Convention for workers in export processing zones (section 11A of the Bangladesh Export Processing Zones Authority Act, 1980).

The Committee notes that, in its report, the Government repeats more or less the same arguments that it raised in previous reports to deny the existence of the above violations or, alternatively, to justify them.

The Committee once again brings to the Government's attention that the above discrepancies between national legislation and the Convention constitute serious violations of the Convention, a point which the Committee has commented on in detail for several years. The Committee notes the Government's statement that the Tripartite Review Committee constituted by the Government is still examining the draft Labour Code submitted by the National Labour Law Commission. In its previous observations, the Committee had observed that the recommendations of the National Labour Law Commission, which was tripartite in nature and included eminent legal experts, dealt with all the points previously raised by the Committee. The Committee strongly encourages the Government to ensure that the Tripartite Review Committee will, during its examination of the draft Labour Code, take into consideration the Committee's previous detailed comments on discrepancies between national legislation and the Convention. The Committee requests the Government to inform it of any progress made in the adoption of the draft Labour Code in its next report and invites it to consider ILO technical assistance.

Belize (ratification: 1983)

The Committee notes the Government's report. It recalls with regret that it has been drawing the Government's attention since 1989 to the need to ensure that workers benefit from adequate protection against anti-union discrimination. It recalls that the fines which may be imposed upon an employer found guilty of anti-union discrimination against workers may not exceed \$250 (Labour Ordinance, Chapter 234, section 199). Given that the monetary penalties have not been revised in the light of inflation and do not exert a sufficiently dissuasive effect against acts of anti-union discrimination, the Committee requests that the Government take measures to amend the legislation to ensure that it is in full conformity with the Convention. The Committee hopes the Government will make every effort possible to take the necessary measures in the very near future.

Articles 3 and 4 of the Convention. The Committee notes that a draft Act (*Trade Union Recognition Act*) aimed at ensuring adequate recognition of unions has been submitted by the Government to the competent authority. The Committee asks the Government to keep it informed of the status of this draft.

Burkina Faso (ratification: 1962)

The Committee notes the Government's report. The Committee notes that the Government mentions that no new collective agreement has been negotiated and that procedures have been taken to conclude sector-based agreements. The Committee hopes progress will be made in the near future given that the Convention was ratified by Burkina Faso 40 years ago.

The Committee notes that Decree No. 97-101/PRES/PM/MTSS/MET of 12 March 1997 concerning the Labour Consultation Committee and Order No. 013/08/AN of 13 April 1998 (that rules different collective agreements in the public sector) have not been received even though the Government has sent them. The Committee requests that the Government send the abovementioned texts once more.

Cameroon (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls that, since the adoption of the Labour Code in 1992, the Committee has requested the Government to amend or repeal sections 6(2) and 166 of the Labour Code which provides for the imposition of a fine ranging from 50,000 to 500,000 francs on the members of the administration or the management of a non-registered trade union which acts as if the union were registered. In this respect, the Committee notes the Government's statement to the effect that an amendment of the Labour Code is envisaged to this effect. The Committee expresses the firm hope that the Government will take the necessary measures to repeal the provisions to ensure that the founders and leaders of trade unions being established enjoy adequate protection against acts designed to prejudice them by reason of their participation in trade union activities, which is contrary to the provisions of *Article 1 of the Convention*. The Committee again requests the Government to provide the text of any measures taken in this respect in its next report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Cape Verde (ratification: 1979)

The Committee notes the Government's report.

The Committee recalls that in its previous observation it had noted that workers' and employers' organizations had not availed themselves of the possibilities offered by national legislation for collective bargaining. The Committee had reminded the Government that in ratifying the Convention, it had undertaken to adopt appropriate measures to encourage and promote the full development and utilization of machinery for voluntary negotiation, with a view to the regulation of terms and conditions of employment by means of collective agreements.

In this context, the Committee notes with interest the Government's statement that security companies and the Industry, Services, Trade, Agriculture and Fisheries Union have concluded a collective agreement which was published in the *Official Bulletin* of 22 February 1999 and that this agreement has been extended nationally to cover all enterprises supplying this service and all workers in the sector. The Committee also notes the Government's indication that, with the mediation of the General Directorate of Labour, the National Airports and Safety of Air Traffic Company and the air traffic controllers are negotiating a collective agreement. The Government also states that steps have been taken to encourage the practice of collective bargaining.

In the light of this information, the Committee requests that the Government continue to introduce measures to ensure the application of the provisions of *Article 4 of the Convention*, and hopes that the Government will be able to include the texts of new collective agreements concluded with its next report.

Colombia (ratification: 1976)

The Committee notes with interest the report of the direct contacts mission which visited the country in February 2000. The Committee also notes the observations made by the Maritime Transport Workers Union (UNIMAR), the Single Confederation of Workers (CUT), the General Confederation of Democratic Workers (CGTD), the Confederation of Workers of Colombia (CTC), the Trade Union of Telecommunication Workers of Santa Fe de Bogotá (SINTRATELEFONOS), the Trade Union of Textile Industry Workers (SINTRATEXIL) and the World Federation of Trade Unions (WFTU) regarding the application of the Convention and it requests the Government to forward its comments in this regard to the Committee.

Recognition of the right to collective bargaining of public employees

The Committee notes with interest that, according to the report of the direct contacts mission, the President of the Republic undertook to ratify the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). The Committee also notes with interest that, during the direct contacts mission, draft legislation was prepared guaranteeing the right of collective bargaining for public employees and the Government undertook to submit the above draft to the social partners and subsequently to Congress. The Committee hopes that when the consultations have been completed, the draft text will be submitted promptly to

Congress. The Committee requests the Government to provide information on any progress achieved in this respect.

Recognition of the right of federations and confederations to engage in collective bargaining

The Committee recalls that in its previous observation it requested the Government, in consultation with the social partners, to take measures to ensure that the right to collective bargaining is also recognized for federations and confederations. In this respect, the Committee notes that the Government informed the direct contacts mission that "federations and confederations, with the exception of the calling of strikes (a question which is addressed in the proposed amendments suggested by the mission), have the same powers as the trade unions (including the right to collective bargaining) under section 417 of the Substantive Labour Code; in addition, section 467 expressly refers to the right to collective bargaining of federations without forgetting that trade union central organizations have concluded national-level agreements". The Committee appreciates having received this clarification.

Requirements to engage in bargaining at the industry or branch level

In its previous observation, the Committee requested the Government to take measures to amend the legislative requirement that industrial or branch unions must represent more than 50 per cent of the workers in an enterprise in order to represent them for the purposes of collective bargaining (section 376 of the Labour Code). In this respect, the Committee notes that the Government informed the direct contacts mission that "as regards section 376 of the Code, which relates to the requirement for the trade union to comprise more than half the enterprise's workers, this refers to a situation in which the effects of the collective agreement apply to all workers; when no trade union (enterprise or industry) meets the legal conditions to negotiate on behalf of all the workers, it can negotiate on behalf of its members, even if there are not very many of them; the difference lies in the fact that when over a third of the workers in an enterprise belong to an enterprise union, the collective agreement applies to all workers whether they are unionized or not (section 471), while in the case of an industrial union this proportion is replaced by the membership of the majority of workers for the same effect to be achieved". The Committee appreciates having received this clarification.

Costa Rica (ratification: 1960)

The Committee notes the observations made by the Rerum Novarum Confederation of Workers, the International Confederation of Free Trade Unions (ICFTU), the Union of Employees of the Ministry of Finance (SINDHEAC) and the Transport Workers Union of Costa Rica (SICOTRA) on the application of the Convention. The Committee also notes the Government's reply to the observations of the Rerum Novarum Confederation of Workers and the ICFTU. The Committee further notes the observations made by the Union of Chambers and Associations of Private Enterprise of Costa Rica (UCCAEP) concerning trade union rights and their protection in Costa Rica.

The Committee notes that in two lengthy communications the Rerum Novarum Confederation of Workers indicates that, as a result of the various decisions by the judicial authorities, the right to collective bargaining has been denied to workers in the public sector, thereby violating the provisions of the Convention. The ICFTU supports these observations. In this respect, the Committee notes that the Government: (1) has requested the technical assistance of the Office with a view to the adoption of specific provisions relating to the right of public servants to bargain collectively; (2) expresses its readiness to prepare draft legislation; and (3) in this context, has convened the trade unions to a bipartite commission, although the unions have made their participation conditional on, among other matters, the ratification of ILO Conventions on this and other subjects, an attitude which the Government regrets. While recalling that, by virtue of *Article 1 of the Convention*, public servants who are not engaged in the administration of the State should enjoy the right to bargain collectively with a view to the regulation of their terms and conditions of employment, the Committee hopes that the Government, on receiving the requested technical assistance in the very near future, will proceed to bring national law and practice fully into conformity with the provisions of the Convention.

The Committee requests the Government to provide its comments in its next report on the observations made by SINDHAC and SICOTRA on the application of the Convention in their communication of 28 June 2000.

Finally, the Committee will examine the remaining matters raised in its previous observation during the course of the regular examination of the application of the Convention in 2001.

Democratic Republic of the Congo (ratification: 1969)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the conclusions of the Committee on Freedom of Association with regard to Cases Nos. 1818 and 1833 and Cases Nos. 1905 and 1910, made in November 1995 and June 1997, respectively, which refer to acts of interference by employers in the private sector and by the public authorities and the violation of the right to collective bargaining.

Article 1 of the Convention. The Committee notes that section 228 of the Labour Code (Legislative Order No. 67310 of 9 August 1967) prohibits the dismissal of or discrimination against workers by reason of trade union membership or participation in trade union activities and that section 49 of the Labour Code only provides for the payment of compensation in the event that a contract of employment is terminated without due cause. The Committee requests the Government to indicate the protection granted to workers whose contracts are terminated for reasons of trade union membership or activity.

Article 2. The Committee notes that section 229 of the Labour Code obliges employers' and workers' organizations to refrain from acts of interference by each other in their establishment, functioning and administration. In this respect, the Committee again requests the Government to provide information on the protection provided against acts of interference by an individual employer.

Article 4. The Committee takes due note of the examination by the Committee on Freedom of Association of the above cases with regard to the refusal by the public authorities to undertake negotiations with the staff of a public service and the refusal to allow certain representative organizations to participate in a joint commission in the public

service and requests the Government to specify the measures adopted to encourage and promote the development and utilization of machinery for negotiations between the public authorities and workers' organizations, including workers' organizations in public sector enterprises, to regulate the terms and conditions of employment.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Denmark (ratification: 1955)

1. The Committee notes the information provided by the Government concerning the negotiation of terms and conditions of employment of foreign seafarers employed aboard Danish ships.

2. In its previous observation, in the context of concerns it had raised regarding section 10 of the Danish International Shipping Register Act (DIS Act) which limits the negotiating power of Danish trade union organizations to residents of Denmark, the Committee took note of the extension of an agreement between Danish shipping federations and seafarers' organizations. This agreement secures the right of Danish unions to represent foreign seafarers for the purpose of collective bargaining in order to ensure that the agreements concluded meet an acceptable international level. The Government in its most recent communication cites developments in this regard, in particular the signing of a new two-year agreement on 13 September 1999 between the social partners. The Government states that this agreement confirms the fundamental principle that Danish labour organizations have a right to be represented at negotiations between Danish shipping companies and foreign organizations to ensure that the results of such negotiations regarding working and living conditions are at an internationally acceptable level. Pursuant to the agreement, a contact committee has been established to develop and extend cooperation between the parties. The Government also refers to a further agreement between the social partners entered into on 25 February 2000 concerning the establishment of collective agreements with foreign unions and individual agreements for foreign seafarers from outside the European Union, which clarifies what is meant by "an internationally acceptable level". The Government states further that the main organizations in the industry and the Government have discussed the issue of the collective agreement provisions in section 10 of the DIS Act, and have confirmed that a common understanding of the administration of the collective agreement provisions in the Act has been achieved through the above-noted agreements. The Committee notes with interest these agreements which appear to promote the voluntary negotiation of terms and conditions of employment of foreign seafarers employed aboard Danish ships. The Committee requests the Government to indicate in its next report the status of these agreements as well as any measures taken or envisaged to bring section 10 of the DIS Act into conformity with the existing practice and into full conformity with *Article 4 of the Convention*.

3. With respect to the Committee's previous comments concerning the application of section 12 of the Conciliation Act, the Committee will address this matter when it receives the Government's full report which is due in 2001.

Ethiopia (ratification: 1963)

The Committee notes the information supplied by the Government in its report.

Articles 4 and 6 of the Convention. The Committee had previously noted that the Constitution of 8 December 1994 granted civil servants the right to organize and to conclude agreements with their employers (article 42). The Committee notes the Government's statement that legislation granting public servants the right to organize and voluntarily negotiate employment conditions is still under consideration. The Federal Civil Service Commission is planning to adopt this legislation in the near future pursuant to the civil service reform on which the country is now embarking. It will be adopted after the concerned organizations provide their comments on the draft legislation.

The Committee requests the Government to indicate in its next report whether the above-noted draft legislation recognizes the right of *all* public servants, with the sole possible exception of those engaged in the administration of the State, the right to negotiate voluntarily their terms and conditions of employment. It further requests the Government to keep it informed of any progress made towards the adoption of this legislation.

Gabon (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee regrets that the Government has not forwarded either its report or its comments concerning the communication by the Confederation of Gabonese Free Trade Unions (CGSL), dated 20 May 1998, and the communications of the Federation of Energy, Mines and Allied Enterprises dated 14 May and 9 November 1998. These communications refer to acts of anti-union discrimination in different enterprises and to obstacles to collective bargaining. The Committee requests the Government to send its comments in this regard and recalls that the Convention requires a guarantee of adequate protection against acts of anti-union discrimination, and provides for the promotion of collective bargaining.

More precisely, the Committee requests the Government to ensure an investigation is undertaken and to inform it of the results.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guinea (ratification: 1959)

The Committee notes the Government's report.

The Committee recalls that its previous comments referred to the need for the national legislation to contain specific provisions to protect workers against anti-union discrimination at the time of recruitment and during employment, to protect workers and their organizations against acts of interference by employers, and that these provisions should be accompanied by effective procedures and sufficiently dissuasive sanctions.

The Committee notes the Government's indication that under the provisions of section 3 of the draft Labour Code, drawn up with ILO technical assistance, no employer may take into account the trade union activity or affiliation of workers in decisions regarding contracts, wages and work organization, termination of employment contracts, etc. In this context, the Committee recalls that by virtue of the provisions of *Article 2 of the Convention*, national legislation should also include provisions aimed at protecting

workers' and employers' organizations against any acts of interference by each other, and that it is necessary to provide expressly for legal procedures and sufficiently dissuasive sanctions against acts of anti-trade union discrimination and interference so as to ensure the effective application of *Articles 1 and 2*. The Committee draws the attention of the Government to the availability of further ILO technical assistance concerning these questions, in the process of drafting the new Labour Code, and hopes that this Code will be in full conformity with the provisions of the Convention and will be adopted in the near future. The Committee asks the Government to indicate in its next report progress achieved in this regard.

Iraq (ratification: 1962)

The Committee notes the Government's report.

Articles 1 and 4 of the Convention. The Committee had observed that the Labour Code (No. 71 of 1987) and Act No. 52 of 1987 regarding trade union organizations contain no provisions that ensure the application of *Articles 1 and 4* of the Convention. It notes that the amendments referred to previously are still under discussion and that the Government states it will provide the text as soon as it is adopted. The Committee expresses the hope that the amendments will be adopted soon and that they will take into account its comments, so as to introduce into the legislation provisions guaranteeing the protection of workers against all acts of anti-union discrimination, enforceable by sufficiently effective and dissuasive sanctions, and to encourage and promote the full development and utilization of machinery for the voluntary negotiation of collective agreements in the private, mixed and cooperative sectors.

Articles 1, 4 and 6. The Committee also observed that Act No. 150 of 1987 regarding public servants does not contain specific provisions to ensure that the guarantees of the Convention are applied to public employees not engaged in the administration of the State. The Committee had asked the Government to supply copies of the laws and regulations applicable to the State and public enterprises and independent public institutions. The Government states that it will send these copies in due course. The Committee had also asked for information on how negotiations are conducted in practice in the abovementioned establishments (number of agreements concluded, number of public employees covered, etc.).

The Committee recalls that under the terms of the Convention public employees not engaged in the administration of the State should enjoy adequate protection against anti-union discrimination and be granted the right to negotiate their terms and conditions of employment collectively.

The Committee trusts that the Government will take the necessary measures to apply the Convention and that it will provide the abovementioned texts and information with its next report.

Jamaica (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee had referred to the denial of the right to collective bargaining in a bargaining unit when no single union represents at least 40 per cent of the workers in the

unit in question or when, if the former condition is satisfied, the union engaged in the procedure of obtaining recognition for collective bargaining purposes does not obtain 50 per cent of the votes of the total number of workers (whether they are affiliated or not to this union), where a ballot is requested by the trade union (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its Regulation). The Committee considers that where there is no collective agreement and where a trade union does not obtain 50 per cent of the votes of the total number of workers required by law, this trade union should be able to negotiate at least on behalf of its own members.

The Committee also considers that where one or more trade unions are already established as bargaining agents, a ballot should be made possible when another trade union claims that it has more affiliated members in this bargaining unit than those trade unions, and thereby invokes its most representative status in the unit in order to be considered as a bargaining agent. The Committee, therefore, requests the Government to take the necessary measures to amend its legislation to this effect and to keep it informed in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Japan (ratification: 1953)

The Committee had noted in its previous comments the observation of the Japanese Trade Union Confederation (JTUC-RENGO) dated 29 October 1999 concerning the application of the Convention. The Committee notes that JTUC-RENGO had sent another communication dated 2 October 2000. The Zenrokyo National Union of General Workers and the Tokyo Zenodosha Kumiai Labour Union (NUGW) sent observations in a communication dated 15 February 2000 and the Japan National Hospital Workers' Union (JNHU/ZEN-IRO) in a communication dated 17 October 2000.

The Committee asks the Government to send its comments on these communications.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Article 1 of the Convention. The Committee had noted that section 34 of Act No. 107 of 1975 concerning trade unions only provided for protection against acts of anti-union discrimination for trade union activities during the employment relationship, but not at the time of recruitment. In these circumstances the Committee requests the Government to take measures to this end accompanied by sufficiently dissuasive sanctions.

Moreover, the Committee had noted that public servants not engaged in the administration of the State, agricultural workers and seafarers, did not have adequate protection against acts of anti-union discrimination. In these circumstances, the Committee requests the Government to take appropriate measures, as soon as possible, accompanied by sufficiently dissuasive sanctions, so that workers in the sectors mentioned above enjoy adequate protection against acts of anti-union discrimination at the time of recruitment as well as during the employment relationship.

Articles 4 and 6 of the Convention. The Committee had noted that sections 63, 64, 65 and 67 of the Labour Code required the clauses of collective agreements to be in conformity with the national economic interest. In this respect, the Committee points out that legal provisions which subject the validity of collective agreements to the approval of the administrative authority for reasons of economic policy considerations in such a way that

employers' and workers' organizations cannot freely determine employment conditions, are not in conformity with *Article 4* of the Convention. In these circumstances the Committee requests the Government to take measures to repeal the above-mentioned provisions of the Labour Code.

In the same way, the Committee had observed that public servants not engaged in the administration of the State, agricultural workers and seafarers do not have the right to bargain collectively. In this respect, the Committee recalls that, under the terms of *Article 6* of the Convention, only public servants who work in the administration of the State (civil servants in government ministries and comparable bodies) may be excluded from its scope. In these circumstances, the Committee requests the Government to take the appropriate measures so that these workers can freely enjoy right of collective bargaining.

The Committee requests the Government to inform it in its next report on any measures taken in relation to the questions raised.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Malaysia (ratification: 1961)

1. The Committee notes the information provided by the Government in its report, and the supplementary information forwarded.

2. For a number of years the Committee has been commenting on the need to repeal section 15 of the Industrial Relations Act (IRA) which limits the scope of collective agreements for companies granted "pioneer status". Since 1994, the Government has indicated to the Committee that the provision was in the process of being repealed; however, the Committee notes that, according to the Government, the repealing legislation has been inadvertently delayed in order to accommodate other amendments to the Act, so that the Act could meet the rapidly changing work environment. Given that section 15 of the IRA constitutes a violation of *Article 4 of the Convention*, and that six years have passed since the Government indicated that the appropriate amendments would be made, the Committee urges the Government to ensure there are no further delays in repealing section 15, and to forward a copy of the repealing legislation as soon as it is adopted.

3. With respect to the Committee's previous comments concerning the restrictions on collective bargaining contained in section 13(3) of the IRA, the Committee notes that the Government reiterates its view that issues pertaining to such things as transfer, dismissal and reinstatement essentially refer to individual rights which could not be predetermined in a collective agreement, since this would affect the rights of management to manage. The Committee must again recall that issues such as transfer, dismissal and reinstatement should not be excluded from the scope of collective bargaining. While a collective agreement would not normally deal with individual cases of transfer, dismissal and reinstatement, it should be possible to include for example, as is often found in the collective agreements in many countries, the general criteria and procedures concerning these issues. The Committee urges the Government to amend the legislation to bring section 13(3) into full conformity with *Article 4* of the Convention.

4. A further provision of the IRA has also been a subject of comment for many years, namely section 52, which provides for certain restrictions on the right to bargain collectively for public servants, other than those engaged in the administration of the

State. Lacking detailed information, the Committee has not been in a position to determine whether genuine collective bargaining exists in this sector or merely consultation. In this regard, the Government again points to the role of the national joint councils in providing an avenue for discussion and negotiation on terms and conditions of employment, including salaries, of public servants. While the Committee has in the past noted this information, it once more requests the Government to provide specific information on how collective bargaining is encouraged and promoted in practice between public employers and public servants. In particular, the Committee would welcome information on the number of employees covered, and the specific issues discussed. The Committee again requests the Government to provide this information as well as examples of the process that has been followed to reach specific collective agreements for public servants.

5. The Committee requests the Government to indicate in its next report the steps taken or envisaged to bring the abovementioned provisions into full conformity with the Convention.

Netherlands (ratification: 1993)

The Committee notes the communications of the Netherlands Trade Union Confederation (FNV) dated 18 November 1999 and 8 November 2000 concerning the application of Conventions Nos. 98 and 154.

The Government states that it is discussing the matters raised by the FNV with that organization as well as with and the civil servants' union ABVA-KABO and that it will keep the Committee informed of any progress achieved.

Peru (ratification: 1964)

The Committee notes the Government's report as well as the comments on the application of the Convention sent by the General Confederation of Workers of Peru (CGTP) and the Government's reply thereto.

Articles 1 and 2 of the Convention. In its previous observation, the Committee referred to: (1) the absence of protection against anti-union discrimination at the time of taking up employment and in the event of prejudicial acts other than dismissal; and (2) the slowness of judicial procedures and the lack of effective and dissuasive sanctions to guarantee the protection of workers and trade union leaders against acts of anti-union discrimination, or against acts of interference by employers in trade union organizations. The Committee notes with satisfaction that Act No. 27270 of May 2000 incorporates provisions prohibiting discrimination on any grounds into the Penal Code, and provides for fines or the temporary closure of the workplace in the event of discriminatory conduct.

The Committee observes, however, that Act No. 27270 of May 2000 does not provide for sanctions against acts of interference by employers in trade union organizations. The Committee accordingly asks the Government to take steps to bring the legislation into full conformity with the Convention and to keep it informed of any measures taken in this regard.

With regard to the slowness of judicial procedures for complaints concerning acts of anti-union discrimination or interference, the Committee recalls that the Committee

on Freedom of Association has noted that in many cases the procedures are excessively long. The Committee notes the Government's statement that the consolidated text of the Judiciary Act provides for sanctions and disciplinary measures against employees of the judiciary who fail to perform their duties properly. The Committee, however, points out that to remedy violations, procedures must be expeditious in order to constitute adequate protection for workers and their organizations against acts of discrimination or interference. The Committee asks the Government to take the necessary steps to remedy these shortcomings and to ensure that the legislation provides for expeditious judicial procedures.

Article 4 of the Convention. In its previous observation, the Committee referred to the requirement of a majority of both the number of workers and the number of enterprises to conclude a collective agreement covering a branch of activity or occupation (sections 9 and 46 of the Industrial Relations Act). The Committee notes the Government's statement that the purpose of the above-noted provisions is: to place greater emphasis on the representativeness of unions; to ensure that a collective agreement by branch of activity or occupation is the result of negotiations between organizations representing the majority of workers and enterprises; and to promote more democratic agreements through assemblies of the membership, proper elections of representatives and the building of collective awareness among workers. The Committee considered that the double requirement was difficult to meet and that the Act should therefore be amended to eliminate the double requirement so that the parties are able to determine freely the level at which they wish to negotiate. The Committee asks the Government to provide information in its next report on the measures taken in this connection and to confirm that the present legislation does not prevent the parties from negotiating even when the union cannot satisfy the double requirement if the collective agreement does not have *erga omnes* effects. If this is not the case, the Committee asks the Government to take steps to ensure that the legislation clearly establishes the right to bargain collectively of sufficiently representative organizations representing less than 50 per cent.

The Committee also observed previously that section 42 of the Employment Promotion Act of 1995 (currently section 9 of the Act on productivity and competitiveness at work – Legislative Decree No. 728) allows employers to "introduce changes or modify working shifts, days and hours, as well as the form and manner in which work is performed". The Committee notes that, according to the Government, such changes are subject to criteria of reasonableness that take into account the needs of the workplace, and there are mechanisms in the legislation which provide that: (1) if the majority of the workers do not agree to the employer's modifications of the work schedule, they may take the employer to the administrative labour authority for a decision on the merits; (2) collective agreements containing clauses on working hours must be respected; and (3) legal action may be brought for failure to comply with collective agreements which are binding on the signatories. The Committee stresses that, despite the existence of the mechanisms referred to by the Government, a legal provision which allows the employer unilaterally to change the content of previously concluded collective agreements, or requires them to be renegotiated, is contrary to the principles of collective bargaining. The Committee accordingly requests that the Government take measures to repeal this provision, and to provide information in its next report on any measures taken in this regard.

With regard to the right to bargain collectively in the public sector, the Committee observes that Emergency Decree No. 011-99, Ministerial Resolution No. 075-99-EF/15 and Emergency Decree No. 004-2000 provide that a global financial increment based on productivity ascertained through an evaluation of individual workers will be granted within the framework of collective bargaining. The Committee points out that such an evaluation should not exclude workers covered by the collective agreement who have been evaluated negatively from entitlement to the salary increments negotiated between the parties. The Committee asks the Government to indicate what the position of negatively evaluated workers is in this respect.

Lastly, the Committee recalls that in its previous comments it noted that a bill to amend the Industrial Relations Act had not been enacted. The Committee notes the new amending bill of 31 July 2000. It observes that some of the provisions of the new bill are inconsistent with the Convention and refers to them in a direct request.

Saint Lucia (ratification: 1980)

Referring to its previous comments concerning the importance of sufficiently effective and dissuasive measures against acts of anti-union discrimination, the Committee notes with satisfaction that, according to sections 4, 5, 6 and 11 of the Registration, Status and Recognition of Trade Unions and Employers' Organizations Acts (1999), complaints of anti-union discrimination or interference may be presented to the Tribunal. If the complaint is well founded, the Tribunal can make such order as it deems necessary to secure compliance of the law. The Tribunal may order reinstatement, the restoration of benefits or the payment of compensation.

Sierra Leone (ratification: 1961)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference. The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body have been received and that the document has just been forwarded to the Law Officers' Department. The Committee asks the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it has been adopted.

Article 4. With regard to the right to collective bargaining of teachers, the Committee would request the Government to provide information in its future reports on any collective agreements covering teachers that have been concluded.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sri Lanka (ratification: 1972)

Noting the comments of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) concerning the Public Security Ordinance, adopted 3 May 2000, the Committee will address this issue

in the context of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

With respect to the pending comments concerning Convention No. 98, the Committee will treat these matters when it receives the Government's report which is due in 2001.

Swaziland (ratification: 1978)

The Committee notes the information provided in the Government's report, in particular the adoption of the Industrial Relations Act, 2000 (the Act). The Committee also notes the recent ILO technical advisory mission to the country (November 2000) during which preliminary draft amendments to the Act were prepared with the authorities.

The Committee notes with satisfaction that the definition of "employee" in section 2 of the Act no longer excludes casual workers; thus these workers are no longer excluded from the rights set out in the Convention.

In its previous comment, the Committee referred to the need to adopt a specific provision accompanied by sufficiently effective and dissuasive sanctions for the protection of workers' organizations against acts of interference by employers or their organizations as required pursuant to *Article 2 of the Convention*. The Committee notes, however, that the Act contains no such provision. The Committee, therefore, recalls the need to adopt a specific provision accompanied by sufficiently effective and dissuasive sanctions for the protection of workers' organizations against acts of interference by employers or their organizations.

The Committee also notes that the Act sets up a system of works councils (section 52) which only the employer is entitled to establish; there is also no provision setting out the manner in which the representatives of the works council are to be appointed, and the works councils may negotiate terms and conditions of employees who are not members of a trade union. In the view of the Committee, such a system may give rise to employer interference and undermine the role of representative trade unions, and does not promote collective bargaining with workers' organizations as envisaged in *Article 4* of the Convention. The Committee notes that a preliminary draft amendment of section 52 was prepared within the framework of the technical advisory mission. The Government is requested to take measures to ensure that there is sufficient protection against employer interference in the creation and functioning of works councils as well as against collective bargaining with non-unionized workers where there is a sufficiently representative trade union.

The Committee notes further that the Act provides for mandatory recognition where the trade union seeking recognition has as members over 50 per cent of the employees of the unit concerned, and provides for recognition at the discretion of the employer where the union has less than 50 per cent (section 42). The Committee recalls its previous comments in this regard, that if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to the unions in the unit, at least on behalf of their own members.

The Committee hopes that the legislation will be brought into full conformity with the requirements of the Convention in the near future.

United Republic of Tanzania (ratification: 1962)

The Committee notes the Government's report.

The Committee has commented for several years on sections 22(c)(i), (v), (vii) and (ix), 23(3)(c) and 39(7)(c) of the Permanent Labour Tribunal Act, No. 41 of 1967, as amended in 1990 and 1993, which empower the court to refuse to register a collective agreement if the agreement is not in conformity with the Government's economic policy. The Committee recalls as a general rule that provisions requiring prior approval of a collective agreement for it to enter into force are only compatible with the Convention provided they merely stipulate that approval may be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation. In this respect, the Committee notes the Government's statement that efforts are being made to amend the Act.

The Committee requests the Government to take measures to amend the legislation accordingly and to keep it informed of any developments in this regard.

Trinidad and Tobago (ratification: 1963)

The Committee notes the Government's reports.

1. With regard to the need to amend provisions that afford a privileged position to registered associations, without providing objective and pre-established criteria for determining the most representative association (section 24(3) of the Civil Service Act, sections 26 and 28 of the Prison Service Act), the Committee notes the Government's statement that the Tripartite Committee appointed to review the Civil Service and Prison Service Acts has recommended to the Chief Parliamentary Counsel that section 24 of the Civil Service Act be amended and that work is being carried out to prepare such amendments. Moreover, section 26 of the Prison Service Act has already been amended: the Prison Service Amendment Act, 2000 was passed in both Houses and is now awaiting assent by the President. The Committee takes due note of this information and requests the Government to supply, along with its next report, a copy of the Prison Service Amendment Act, 2000 and of the Act amending section 24 of the Civil Service Act, once adopted.

2. With regard to the necessity of amending section 34 of the Industrial Relations Act, Chapter 88:01, in order to allow a union whose members constitute the largest number of workers in a bargaining unit even if it is unable to reach a membership of 50 per cent of the workers in that bargaining unit, to negotiate collectively employment conditions, the Committee notes the Government's statement that the Tripartite Committee set up to review this issue has considered that this provision should not be amended since it is believed that multiple bargaining agents will create industrial conflict in the context of the culture of the country. In this regard, the Committee would point out that the requirement that a union obtain the support of an absolute majority of workers in the bargaining unit to be granted bargaining rights in practice means that there is a risk in many cases that employees will be deprived of the benefits of collective bargaining. The Committee therefore requests that the Government take the necessary measures to ensure this provision is amended so that when no union represents an absolute majority of workers, the union which represents a relative majority of workers in the bargaining unit can carry out negotiations for a collective agreement, at least on behalf of its own

members. The Committee asks the Government to keep it informed of developments in this respect.

3. With regard to the need to establish an appropriate mechanism to deal with the grievances of the Central Bank's employees, the Committee understands that section 20 of the Central Bank Act, Chapter 79:02 as amended by Act No. 23 of 1994, establishes a mechanism for the settlement of disputes between the Central Bank and its employees according to which the Minister of Labour has the power to refer disputes to a special tribunal whose decision is final (see sections 20E and 20F of Act No 23 of 1994). The Committee had found it difficult to reconcile such ministerial intervention with the principle of the voluntary nature of negotiation recognized by *Article 4*. The Government indicates in this regard that the Tripartite Committee established by Cabinet has concluded that there is no need to amend this aspect of the law since the unions likely to represent these workers can pursue the option of recognition and have the right to collective bargaining under the law. In this respect, the Government adds that the General Workers' Trade Union was granted recognition as the bargaining agent for Central Bank employees on 8 May 2000. Since then, the union has submitted proposals to the bank for a new collective agreement. The Committee takes note of this recent development and requests the Government to keep it informed of the outcome of negotiations, and in the event of agreement between the Central Bank and the union, to transmit a copy of the new collective agreement.

Turkey (ratification: 1952)

The Committee notes the comments made by the Confederation of Progressive Trade Unions of Turkey (DISK) in a communication dated 19 July 2000 concerning the denial of the right to bargain collectively for ten trade union organizations due to the fact that they could not satisfy the 10 per cent membership requirement. The Committee notes that the Government states that it has initiated work to amend Acts Nos. 2821 and 2822 and proposed to lift the 10 per cent membership requirement in a given branch of activity for collective bargaining purposes, and that consultations with the social partners on these draft Bills are soon to be finalized.

The Committee requests the Government to send a copy of the Bill to amend Acts Nos. 2821 and 2822 as soon as prepared so as to be in a position to assess its conformity with the requirements of the Convention.

The Committee will examine next year this question as well as the issues raised in its previous observation, in the framework of the regular supervision of the application of the Convention.

Uruguay (ratification: 1954)

The Committee notes the Government's report.

The Committee observes that the Inter-Trade Union Assembly-Workers' National Convention (PIT-CNT) has sent comments on the application of the Convention, attached to the Government's report and communicated separately. The Committee requests the Government to send its comments in this respect.

Yemen (ratification: 1969)

The Committee notes the information supplied by the Government in its report.

Article 1 of the Convention: Protection against anti-union discrimination. The Committee has previously commented on the need for specific provisions, accompanied by effective and sufficiently dissuasive sanctions, to guarantee the protection of workers against any act of anti-union discrimination by employers both at the time of taking up employment and in the course of employment. The Government states in its report that the draft Trade Union Act does *not* include specific provisions accompanied by effective and sufficiently dissuasive sanctions which guarantee the protection of workers against any act of anti-union discrimination by employers and adds that the Committee's observation will be taken into consideration when amending the draft Trade Union Act. The Committee recalls that the protection afforded to workers and trade union officials against acts of anti-union discrimination constitutes an essential aspect of the Convention and urges the Government to amend the draft Trade Union Act to ensure such protection. The Committee requests that the Government indicate the progress of the draft Act through the legislative process and any amendments made thereto.

Article 2: Protection of workers' organizations against acts of interference by employers. The Committee regrets that the Government does not provide any information on this matter, which has been raised by the Committee since 1985. The Committee recalls that national legislation should make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to ensure the application of Article 2 of the Convention. Moreover, to ensure that these measures receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay down these substantive provisions, as well as appeals and sanctions in order to guarantee their application (see General Survey on freedom of association and collective bargaining, 1994, paragraph 232). The Committee urges the Government to make every effort to ensure that the draft Trade Union Act will contain such provisions in the near future.

Article 4: Voluntary negotiation of collective agreements. The Committee takes due note of the information provided in the Government's report to the effect that a few collective bargaining negotiations were held from 1996 to 1999 in view of the Government's encouragement of collective bargaining and pursuant to the provisions of the Labour Code. According to the Government, these negotiations provided an impetus for a reinforcement of placement and increasing workers' protection in the various sectors and fields such as oil, fishing, transport, telecommunications, electricity, aviation, health, universities, ship basins, the port of Aden, teaching, red sea mills, the port of Al-Hadida, and the cement industry. During this period, 15 collective agreements were concluded, and the number of workers covered reached 38,000. The Committee asks the Government to further promote collective bargaining and to provide statistics on the number of workers covered by collective agreements in comparison with the total number of workers in the country.

With reference to its previous observation, the Committee notes that section 34(2) of the Labour Code provides for the compulsory revision and registration of collective agreements and section 32(6) stipulates that a collective agreement shall be invalid if any of its terms is "... likely to cause a breach of security or to damage the economic interests of the country ...". The Government states that the registration at the Ministry

of Labour and Vocational Training is required so as to protect past and subsequent workers or prohibit any violation of the criteria relating to minimum standards laid out in the Labour Code. The Government underscores that the purpose of section 32(6) of the Labour Code does not lie in constraining the freedom of the partners to negotiate collective agreements; rather, it aims to highlight that freedom must be exercised within its scope, the reason being that trade union awareness and collective bargaining are still quite recent and are still in the early phases of development. While noting the Government's explanation, the Committee points out that the legislation goes beyond ensuring respect of legal minimum standards. In this context, it recalls that legislation that allows the authorities full discretion to deny approval based on criteria such as compatibility with general or economic policy of the Government, in fact makes the entry into force of the collective agreement subject to prior approval, which is a violation of the principle of autonomy of the parties (see General Survey, *op. cit.*, paragraph 251). The Committee requests that the Government amend sections 32(6) and 34(2) so that refusal to register a collective agreement is possible only due to a procedural flaw or because it does not conform to the minimum standards laid down by the labour legislation.

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In addition, requests regarding certain points are being addressed directly to the following States: *Comoros, Ethiopia, Georgia, Kyrgyzstan, Lesotho, Madagascar, Nepal, Niger, Peru, Poland, Saint Vincent and the Grenadines, Sao Tome and Principe, United Republic of Tanzania, Zimbabwe.*

Information supplied by the *Russian Federation* in answer to a direct request has been noted by the Committee.

Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951

Requests regarding certain points are being addressed directly to the following States: *El Salvador, Grenada, Morocco, Sierra Leone.*

Convention No. 100: Equal Remuneration, 1951

Afghanistan (ratification: 1969)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. The Committee observes that the application of this Convention is linked inextricably with women's right to equality of opportunity and treatment in employment more generally. In this connection, the Committee refers to its observation under Convention No. 111, which should be read together with this observation.

2. The Committee notes the information provided in the Government's reports, which were received on 26 June and 8 July 1996, respectively, including the information provided by the Government concerning the criteria used to classify civil servants and workers, and that concerning the determination of additional remuneration, such as overtime pay, travelling expenses, pension rights, food, and consumer goods.

3. In its previous comment, the Committee noted the Government's reliance on section 9 of the Labour Code (which stipulates "equal wages for equal work"), whereas the Convention encompasses the broader principle of equal remuneration for work of equal value. Observing that the Government's reports continue to deny any discrimination in the terms and conditions of employment of men and women and refer to section 75 of the Code (containing the criteria for wage determination) without demonstrating how the broader concept is applied, the Committee asked the Government to consider amending the Labour Code so as to reflect fully the principle of the Convention. In its report the Government states that, on the instruction of the competent authorities, the Labour Code is to be amended, and that in any such amendments, the matters raised by the Committee will be taken into consideration and will be reported to the Office. The Committee hopes that the necessary action will be taken to amend the Labour Code in line with the scope of the Convention and asks the Government to provide information on further developments.

The Committee trusts that a report will be supplied for examination at its next session and that it will contain full information on the matters raised in its previous comments.

Angola (ratification: 1976)

1. The Committee notes the enactment of the General Labour Act, No. 2/00 of 11 February 2000. It notes with interest that section 162(1) of the Act defines remuneration broadly in general conformity with *Article 1(a) of the Convention*.

2. The Committee further notes with interest that section 264 of the Act requires employers to ensure that workers receive equal remuneration for equal work or work of equal value, subject to the worker's skills and output. Chapter XI(I) of the Act contains provisions relating specifically to the employment of women, including section 268(2)(d), which establishes the right of women workers to receive equal remuneration for equal work or for work of equal value. Subsection 3(b) of section 268 defines work of equal value as "work carried out for the same employer, when the tasks performed, albeit of different natures, are determined to be equivalent through the application of objective job evaluation criteria". In the Committee's view, the incorporation of the principle of equal value and objective job evaluation criteria in national legislation are very positive developments in the application of the Convention. The Committee hopes that the Government will undertake activities to raise awareness and understanding among workers, employers, labour inspectors and other enforcement officers regarding the new equal pay process. It also expresses the hope that the Government will endeavour to promote the principle of equal remuneration for men and women to cases extending beyond those employed by the same employer, wherever wages are set more broadly, for example, at the sector level. In applying the principle of the Convention by means appropriate to the methods in operation for determining rates of remuneration, the reach of the comparison between jobs should be as wide as allowed by the level at which wage policies, systems and structures are coordinated (see General Survey on equal remuneration, ILO, 1988, paragraph 22).

3. The Committee is raising other points in a request addressed directly to the Government.

Denmark (ratification: 1960)

The Committee notes the detailed information provided in the Government's report, and the attached documentation.

1. The Committee notes with interest the adoption on 30 May 2000 of an Act on Equality between Women and Men (Act No. 388) aimed at mainstreaming the principle of equality into statutory form as a basic element in the promotion of equality. It notes from the Government's report that the new Act replaces the Equal Status Council with a three-tiered structure comprising of the Minister of Equality, a research and documentation centre on equality (the Knowledge Centre) and an independent body known as the Equal Status Board. In this respect, the Committee notes that the Minister is responsible for mainstreaming gender issues and for devising and implementing action plans to promote equality generally, as well as for coordinating the work of other ministries in this area. The Equal Status Board is responsible for the handling of all gender discrimination complaints with the exception of those cases which fall under the industrial system. Thus, the Board only deals with complaints from organized employees if the employee can prove that his or her union will not take up the complaint and in this way acts as a safety net. It notes also that the Board can monitor the application of the new Equality Act, the Equal Treatment Act and the Equal Remuneration Act and can award compensation for violations. The Committee asks the Government to provide information in its next report on the implementation of Act No. 388, including the work of the Minister for Equality, the Knowledge Centre and the Equal Status Board, relevant to the promotion of equal pay for work of equal value.

2. The Committee is raising other points in a request addressed directly to the Government.

Dominican Republic (ratification: 1953)

1. The Committee takes note of the Government's report as well as the statistical annex. In its earlier comments, it referred to the restrictive nature of the requirements set forth in section 194 of the Labour Code, which provides that there shall be equal pay for equal work in specific conditions. It notes with interest that, in view of these comments, the Government submitted the Committee of Experts' suggestion of incorporating in national legislation the concept of work of equal value to the Advisory Labour Council, a tripartite body, which approved it. An appropriate amendment will be placed before Congress, with a view to the amendment of the abovementioned section 194 during the period beginning in August 2000. Noting that such amendments will bring the law into harmony with the current interpretation of the legislation in force, the Committee hopes that the amendment will be approved during the present year and asks to be kept informed on this amendment, and also on its application.

2. A request concerning other points is being addressed directly to the Government.

Finland (ratification: 1963)

The Committee notes the detailed information provided by the Government in its report as well as the comments from the Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK), the Confederation of

Unions for Academic Professionals (AKAVA), the State Employer's Office (VTML) and the Commission for Local Authority Employers (KT).

1. The Committee notes from the report that the employment situation in Finland has been improving for several years and that employment has increased for both men and women. The Government states that there is no significant difference between the unemployment rate for women and that for men; in 1999, the unemployment rate for women was 10.7 per cent as compared to 9.8 per cent for men. SAK states that the recession of the 1990s caused persistent long-term unemployment which has affected women, particularly older women, more than men.

2. The Government indicates that the pay differentials between men and women have reduced slightly in the 1990s, due largely to the economic recession of the early 1990s which reduced "wage drift" in the private sector, as well as to the equality allowances contained in the comprehensive incomes policy agreements of the 1990s. The data supplied by the Government indicates that pay differentials between men and women have decreased in the municipal sector, where women predominate (78 per cent of municipal employees are women). In 1999, women in the municipal sector earned approximately 77 per cent of men's average overall monthly earnings (compared to 75 per cent in 1996). The data provided indicates that, in terms of regular working hour earnings, women's pay in 1999 was 80 per cent of men's. The Government points out, however, that a detailed analysis of the municipal sector by job group shows that the pay differentials are in fact slight and that there are occupations where men earn less than women on average. The Committee notes from the report that, in state employment, women's average earnings in 1998 were 79.3 per cent of men's (compared to 79 per cent in 1993). In the metallurgical industry, women's average hourly wage for regular working time in the second quarter of 1999 was approximately 86 per cent of the comparable figure for men, while women's pay was about 95 per cent of men's when compared by pay group. AKAVA states that the pay differentials between men and women have remained largely unchanged in the late 1990s, with AKAVA women earning 73 per cent of men's average pay, in 1999.

3. The Government attributes the pay differentials noted to a range of factors, depending upon the sector involved. It indicates that differentials in the municipal sector are due to a specialized labour market, education, age structure, amount of overtime worked and other factors. It attributes the differentials in the state sector to divisions in the wage market and to the placement of men and women in different jobs. The Government indicates that differentials in the metallurgical industry are due largely to job specialization. The VTML states that, in analysing the pay differentials between men and women, pay levels should be compared with job difficulty. According to the VTML, if job difficulty and other factors are taken into account, then the actual imbalance caused by gender would be 2 per cent. AKAVA attributes women's lower earnings to the prevalence of women in atypical employment relationships (part-time and fixed-term relationships), where pay is substantially lower than average for permanent employees. It points out that half of all women under 30 have a fixed-term employment relationship and that 85 per cent of young women members of AKAVA employed by the State have a fixed-term relationship. The KT emphasizes that municipal employees have excellent agreement-based opportunities for family leave, sick leave and other leave of absence, which considerably increases the demand for fixed-term employees, particularly in the largest fields of the municipal sector, which include health care, social welfare and

education. The Government indicates in the report that the development of equal opportunities in the labour market is complicated by the fact that atypical employment is far more common among women than men. In this context, the Government points to the amendments to Chapter 2a of the Employment Contracts Act on family leave, which were designed to clarify the family leave provisions and facilitate the taking of such leave. The Committee would be grateful if the Government would continue to provide information on measures taken or envisaged to promote wage parity for workers in atypical employment relationships, as well as the impact of the amendments on the wage gap and on women's ability to compete effectively with men on the labour market.

4. The Committee notes that in 2000 the Equality Ombudsman launched a study project to create a framework for regularly outlining the pay differentials between men and women and to generate data on developments in regard to the differentials and the factors that cause them. The Committee would appreciate receiving information on the results of the study once it is completed.

5. The Committee notes that the incomes policy agreement in force in Finland until the end of 1999 contained an equality allowance targeted at lower-paid sectors where women predominate. It notes from the report that branch-specific collective agreements concluded in late 1999 and early 2000 do not contain such allowances. The SAK states that the pay differentials between men and women have remained unchanged due to the equality allowances mentioned. The STTK indicates that women's low-pay allowances in incomes policy agreements play a significant role in reducing the pay differentials in situations where overall pay raises are small, where pay developments observe agreement guidelines and wage drift is relatively minimal. However, the STTK points out that equal pay should be promoted through other measures such as pay system reform through job demands evaluation (evaluation of the demands inherent in the job) and equality plans formulated pursuant to the Equality Act. The STTK states, however, that the implementation of equality in the workplace has been hindered by a lack of systematic planning. An STTK survey among industrial employees indicated that only 6 per cent of all workplaces had an equality plan in place. The KT feels that achieving equal pay may have a negative impact because removal of pay differentials would prevent employers from implementing incentive pay policies.

6. With regard to job evaluation methods, the SAK and AKAVA state that new pay systems based on job demands evaluation have been agreed upon in numerous sectors. The Government indicates that 17 state agencies and institutions now have agreements on the new pay systems. However, AKAVA points out that the impact of the new pay systems on promoting equality in the workplace should be studied, particularly in the central administration, where the pay system reform is most advanced. The Committee notes from the report that the Ministry of Finance and the main social partners signed an agreement on 10 March 1999 to promote the new pay systems, which provides for the establishment of a working group to draft a proposal for the codification of pay system reform in central government collective agreements for employees and officials. The Committee also notes the report supplied by the Government on job demands evaluation in the state sector, and that the State Employer's Office is continuing the development of research and statistical methods relevant to this issue as part of its work on developing pay systems. The Committee would be grateful if the Government would keep it informed of the proposals made by the working group, as

well as the results of the work of the State Employer's Office in this area, including the impact of the new systems on existing pay differentials.

7. *The right to obtain pay data.* The STTK states that monitoring the application of the principle of equal remuneration is hindered at the workplace level by the fact that the availability of pay data to shop stewards is limited in that data on pay to employees covered by a different collective agreement from that of the shop steward is unavailable. The STTK notes, however, that progress was made during the 2000 negotiations when a shop steward under the Finance and Special Fields Union of the STTK obtained the right to access data on average pay and similar statistics separately for men and women by job demands level. The Government indicates that the right of shop stewards to obtain pay data differs in the public and private sectors, but that the amendments to the Act on the Openness of Government Activities (621/1999) improved the right of shop stewards to obtain information in the state and municipal sectors. The shop steward agreement relating to the collective agreement for municipal employees and officials also included a clause providing that shop stewards shall have the right to obtain data on the pay levels of employees and officials.

8. The Committee notes the information provided by the Government with regard to the equal pay complaints received by the Equality Ombudsman. It also notes the comments of the Chemical Workers' Union with regard to the application of Discrimination (Employment and Occupation) Convention, 1958 (No. 111), that it is difficult for employees to initiate complaints under the Act on Equality between Women and Men due to fears of retaliation. The Committee hopes that the Government will continue to provide information on the Ombudsman's activities relevant to the investigation and resolution of equal pay complaints, including a summary of the complaint, the action taken and the outcome.

Germany (ratification: 1956)

1. In its previous comments, the Committee asked the Government to provide information on the measures that had been taken or were envisaged to bring about a more balanced representation of men and women in skilled and unskilled categories of workers in production industries, and to reduce wage gaps. The Committee notes with interest that, on 23 June 1999, the Federal Government adopted a programme entitled "Women and Occupations", with the objective of achieving equality of treatment between men and women workers in private industry and the abolition of all obstacles to the achievement of such equality. In the context of this programme, the Government has commenced an intensive dialogue with the representatives of employers' and workers' organizations, political circles and universities, gathered together in a working group of experts composed of both men and women. The mandate of the working group is to develop rules and instruments to promote equality of status between men and women in their professional lives, and to compile examples of enterprises which have succeeded in this respect. One of the points to which the Government attaches great importance, in connection with this working group, is the implementation of the principle of equal remuneration for men and women for work of equal *value*. The second component of this programme consists of the preparation of a detailed report on equal remuneration and the economic situation of women which the Government intends to submit to Parliament at the end of 2001 and which will include, among other information, the

remuneration levels of men and women in the various economic sectors. The report also has the aim of identifying the principal causes, whether direct or indirect, of wage discrimination between men and women, of examining procedures for the evaluation of jobs, bonuses, wage agreements and other relevant issues.

2. The Committee would be grateful if the Government would keep it informed of the various activities carried out in the context of this programme, and particularly if it would provide copies of the conclusions and recommendations of the expert group, as well as of the report on equal remuneration and the economic situation of women, which it is to submit to Parliament in 2001.

3. With regard to the maintenance of "wage categories for light physical tasks" in 26 collective agreements (out of a total of 268), the Committee notes that the Government considers that the problem is now minor, taking into account the fact that in practice this classification concerns only a limited number of men (13,000) and women (21,000) and that the wage gap between this category and the one which immediately follows it is low (2 per cent). The Committee also notes that both Parliament and the Government are of the opinion that it is for the social partners to continue the efforts that they have made to refine the criteria used for the evaluation of unskilled jobs, since collective agreements have tended up to now to place emphasis on the physical strength required for this type of job. The Committee hopes that the Government will decide to encourage the social partners to take into account the case law of the Federal Labour Tribunal which is tending to give more weight to tasks that, although physically lighter, cause mental and nervous tension.

4. Finally, the Committee notes the statistical data on wages provided by the Government in reply to its general observation adopted in 1998, although it regrets that these relate only to the private sector. It notes the Government's statement that the wage differences between men and women are not all due to discrimination against women and that some can be explained by the low skill level of the women concerned, their occupation of low-skilled jobs, the concentration of each of the sexes in different branches and sectors, differences in seniority, career interruptions due to family responsibilities, the overtime hours worked, early retirement, etc. In this respect, the Committee wishes to draw the Government's attention to paragraph 100 of its 1986 General Survey on equal remuneration, in which it emphasizes the indivisibility of equality and the fact that many difficulties encountered in applying the principle of equal remuneration for work of equal value are intimately linked to the general status of women and men in employment and society. The Committee considers that the objective of eliminating wage discrimination between the two sexes "cannot be reached in a satisfactory way unless national policy also aims at eliminating discrimination on the basis of sex in respect of access to the various levels of employment".

Ghana (ratification: 1968)

The Committee notes with regret that the Government's report has not been received. It trusts that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which reads as follows:

1. In its previous comments, the Committee had noted that in each of a number of collective agreements supplied by the Government, a differentiation was made, or appeared

to be made, between female and male employees concerning the allocation of certain fringe benefits. The Committee notes with interest from the Government's report that the National Advisory Committee on Labour has recommended that the Minister for Employment and Social Welfare should issue appropriate directives to the Trades Union Congress and to the Ghana Employers' Association prohibiting the use of gender discriminatory provisions or language in future collective bargaining agreements. The Committee also notes the Government's statement that some parties to collective agreements have begun to interpret the offending clauses to apply equally to both female and male employees in their establishments. The Government adds, however, that some employers hold to the view that since the collective bargaining agreements in question were arrived at through negotiation, any such changes would also have to be negotiated. The Committee hopes that the Government and the National Advisory Committee on Labour will take measures to convince all employers of the need to comply with the provisions of the national legislation and with the requirements of the Convention. The Committee requests the Government to furnish a copy of the directives issued by the Minister for Employment and Social Welfare in this matter and to supply copies of any recently negotiated collective agreements, particularly those applying to enterprises and industries in which earlier agreements contained gender-discriminatory provisions and language.

2. In its previous comments, the Committee had drawn attention to section 68 of the 1969 Labour Regulations (L.I. 632), which refers to "identical or substantially identical work" as the basis for comparison between men's and women's jobs, and asked the Government to consider an amendment to provide expressly for equal remuneration for work of equal value. The Committee notes with interest from the Government's report that the National Advisory Committee on Labour has recommended to the Minister that the wording of section 68 be amended to bring it into conformity with the Convention. The Committee recalls to the Government the possibility of seeking assistance from the International Labour Office before any such amendments are finalized and hopes that the Government will take advantage of this facility.

3. The Committee notes that the Government has taken measures to obtain the information requested previously concerning the methods and criteria used for classifying jobs in the public and private sectors. The Committee hopes that the Government will be in a position to provide this information in its next report.

Iceland (ratification: 1958)

1. The Committee notes with interest the adoption of the Act on Equal Status and Equal Rights of Women and Men (Act No. 96/2000), which came into effect on 6 June 2000 and is aimed at establishing and maintaining equal status and equal opportunities for women and men in all spheres of society. Section 14 of the Act specifically provides that women and men who are employed by the same employer shall receive equal pay and enjoy equal terms for comparable work of equal value. The Act defines pay as general remuneration for work done and includes both direct and indirect payments and benefits, which are to be determined in the same manner for women and men and to be based on criteria free from gender discrimination. The Committee notes that in regard to implementation of the Act, the Minister of Social Affairs will have overall responsibility, through an Equal Status Bureau to monitor compliance with the Act. It notes also that the Act establishes a consultative body to submit proposals to improve equality in the labour market and in other spheres – the Equal Status Council – and a Complaints Committee on Equal Status to consider allegations of violation of the Act. The Committee asks the Government to provide information in its next report on the

implementation of Act No. 96/2000, including the work of the Bureau, the Council and the Complaints Committee in promoting equal pay for work of equal value.

2. The Committee is raising other points in a request addressed directly to the Government.

Japan (ratification: 1967)

1. The Committee notes the information contained in the Government's report in response to its previous observation regarding the communications from the Japanese National Hospital Workers' Union (JNHWU), concerning "wage-based" contract staff (*chingin-shokuin*) and alleging discrimination based on the type of their contract in contravention of the Convention. It also notes the court decisions and statistical information attached to the report.

2. The Committee also notes the observations received from the Japanese Trade Union Confederation (RENGO) concerning the application of the Convention to part-time workers. These communications have been forwarded to the Government and will be examined by the Committee at its next session together with any comments the Government may wish to make.

3. The Committee notes that no indication of the overall earnings differential between men and women was communicated by the Government this year. Nevertheless, the data supplied permitted some conclusion to be drawn concerning labour market participation rates and earnings. For example, the earnings differentials between men and women were narrower among university graduates than among groups at lower educational levels. It appears that earnings differentials tend to widen in the higher age brackets, with women university graduates aged 20 to 24 earning 91 per cent of men's contractual cash earnings compared to women graduates in the 40-44 age group who earn 77 per cent of men's contractual cash earnings. The same age trend is apparent among less-educated men and women. For example, women junior high-school graduates in the 20-24 age bracket earn 76 per cent of the contractual cash earnings of their male counterparts, while similarly educated women in the 40-44 age range earn 58 per cent of the earnings of men in the same age group. The Committee further notes that the participation of men and women in the Japanese labour market also varies widely by age across all sectors. Women in the 20-24 age bracket make up 49.5 per cent of the labour force in industry, 76 per cent in finance and insurance, 32 per cent in transport and communications, 40 per cent in manufacturing, 64 per cent in services and 50 per cent in the wholesale and retail trade sector. Their participation rate declines markedly in the higher age brackets, with the percentages of women aged 30-34 decreasing to 25 in industry, 40 per cent in finance and insurance, 10 per cent in transport and communications, 19 per cent in manufacturing, 37 per cent in services and 25 per cent in the wholesale and retail trade sector. The Committee requests the Government to provide statistics in its next report, in accordance with its general observation adopted in 1998, that would permit an assessment of the overall trends in the labour force participation and the remuneration levels between men and women, including the wage differentials within the same age bracket.

4. The Committee recalls that the JNHWU alleged that there are significant disparities of treatment, including the level of wages, between wage-based contract staff, who are employed on a daily basis for a maximum of one year at a time, and permanent

staff employed in the national hospitals and sanatoriums. The JNHUW claimed this situation violated the Convention because women make up 70 per cent of the pool of contract staff. The JNHUW's communications also referred to a unilateral reduction of contract staff wages in 1993, which accentuated the pay disparity, following the adoption of "management restructuring" measures.

5. Based upon the information provided by the Government, the Committee had observed earlier that neither direct nor indirect discrimination based on sex existed between the contract staff and the permanent staff of the hospitals and sanatoriums since women are concentrated in equally high percentages in both. The Committee, however, expressed its concern that the predominantly female sector has such a large percentage of contract staff. The Committee noted that the extensive utilization of temporary labour in a predominately female sector has an indirect impact on wage levels in general, inevitably broadening the wage gap between men and women. It therefore urged the Government to take measures to enable hospitals to harmonize their employment practices with their personnel needs in the light of the requirement under the Convention to ensure equal pay for work of equal value.

6. The Committee notes the Government's indication that the Ministry of Health and Welfare is making efforts to implement measures directed at harmonizing the hospitals' employment practices with their actual personnel needs in line with the National Personnel Authority's decision of 1996, which recommended: (a) promotion of rationalization through the reconsideration of tasks performed by wage employees, reorganization of hospital wards; (b) appointment of short-term or non-permanent staff to tasks performed over short periods or for shorter than eight hours per day; and (c) the appointment of permanent employees in positions requiring full-time service after appropriate redistribution of staff. The Government reports that efforts are being made to reduce the number of wage-based employees as much as possible and to operate national hospitals and sanatoriums with the fixed number of permanent staff. The Committee would be grateful if the Government could supply more detailed information on these measures being undertaken by the Ministry of Health and Welfare and the specific results achieved in reducing the wage differentials between the wage-based and permanent staff, considering that, as the Government itself states, this practice has existed in the national hospitals since 1968 and has been managed inadequately.

7. The Committee also asked the Government to provide information on other sectors that may utilize wage-based contract staff and the proportion of men and women in such sectors. The Government indicates that no institutions under the public authority other than hospitals and sanatoriums engage wage-based employees. The Committee recalls that it requested this information on the existence of wage-based staff in all sectors and would be grateful if the Government could provide such information in the detail requested in its previous observation.

8. The Committee notes the Government's view expressed in its report, that the Committee of Experts' observations seem to have expanded to an analysis of wage disparities between men and women in general, rather than the principle of equal remuneration for men and women for work of equal value, and thus exceeding the Convention's scope. The Government considers that such general disparities result from various factors such as the type of sector, region, size of enterprise, form of employment, working hours, occupation, rank, age, education, and length of service. It states that

these areas need to be addressed through promotion of gender equality in hiring and posting and job promotion, as well as harmonization of professional and family life. The Committee notes the analysis of the Government and agrees that the above factors are causes of pay disparities between men and women that need to be addressed. In regard to the Government's statement that such factors are unrelated to the Convention, however, the Committee would point out that it has often recalled the link between the promotion of equal pay for work of equal value and the promotion of general measures of equality. It observes, as it has in the past, that measures to promote equal access to employment, promotions and to a wide range of occupations as well as the promotion of equal status between men and women in the society are not only relevant but essential to the full application of the Convention. The Committee also draws the Government's attention to the fact that while the Convention does not require the abolition of differences in the general wage level between various regions, sectors or enterprises, the principle of equal remuneration for men and women workers for work of equal value extends beyond jobs performed in the same establishment, and beyond jobs performed by both sexes. It refers the Government to paragraph 22 of its General Survey of 1986 on equal remuneration, indicating that discrimination may first of all arise out of the existence of occupational categories and jobs reserved for women, which is the case in the career tracking system as applied in a certain number of enterprises in Japan.

9. Further to its previous comments, the Committee notes the Government's statement in its report that the career tracking system in Japan has been used mainly as a gender-based employment management system. The Committee notes from the Government's report that, in 1998, 42.4 per cent of the companies having adopted the career tracking system in their personnel management, have hired both men and women for their fast track, which constitutes a 14.8 per cent increase as compared to the previous survey (27.6 per cent in 1995, which was itself a 18.9 per cent decrease from the 1992 survey). The Committee would be grateful if the Government could provide information on the reasons given for these fluctuations, as well as the difference between the number of companies willing to hire women on the fast track (42.4 per cent) and the number of companies declaring that they wish to "actively utilize women's abilities" in their policy regarding utilization of women in the fast track in the future (65.6 per cent according to the "Survey of the employment circumstances of women in super track" implemented in February 2000).

10. The Committee notes with interest that to address the gender segregation promoted through the career tracking system, the Ministry of Labour issued in June 2000 the "Matters to be noted in relation to employment management differentiated by career track", which is attached to the report. These guidelines replace the previous ones on the career tracking system and are aimed at securing compliance with the Equal Employment Opportunity Law, promoting equality between men and women in human resource management at the enterprise level, and enhancing women's job-related competencies. The Committee notes that the guidelines acknowledge that the career tracking system has been functioning in many instances as a *de facto* personnel management differentiated on the basis of gender. The guidelines clarify that, pursuant to the entry into force on 1 April 1999 of the revision of the Equality Law of 1997, the employers not only have the obligation to manage the career tracking system without discrimination on the basis of gender at every stage of employment including recruitment, they are also encouraged to take positive action for the enhancement of

women's competencies in employment. The employers thus have an obligation to design each career tracking according to objective and rational considerations and an objective evaluation of the contents of tasks performed. Any changes to the treatment afforded under the tracks have to be notified and discussed with the unions and the workers beforehand. The guidelines finally enumerate a series of measures to be taken in order to manage the career tracking system in an optimal manner that takes into account the experience and competence of workers, and in a way that enhances their motivation. In this regard, reference is made to the difficulties which exist for women having regard to their burden of childcare and housework, transfer to remote workplaces that involve separation from the family, and developing a balance between work and family life. With reference to the statistical information on the participation of women in the labour market, the Committee finds it important to promote measures that will assist the professional development of women in the current social context. It must note, however, that this approach still places family responsibilities mainly on women and in this regard the Committee would refer to the obligations under Convention No. 156 which Japan has ratified.

11. The Committee notes the above-described guidelines with interest as they address many of the sources of the wage differential between men and women to which the Committee has been making reference in its comments. It is also pleased to note that the Prefectural Labour Bureau, as well as the Equal Employment Department, will from now on base their notifications and guidance on these guidelines. The Committee would be grateful if the Government would supply information on the manner in which the guidelines are implemented at the enterprise level, their impact in reducing the wage differential between men and women, and their use in any administrative or judicial proceedings.

12. The Committee would be grateful to be kept informed of cases concerning wage discrimination on the basis of gender brought before the Equal Opportunity Arbitration Committee, and the way they are resolved. It also welcomes the Prefectural Labour Bureau's supervisory and promotional activities directed to enterprises and requests the Government to provide information on these activities.

Lithuania (ratification: 1994)

1. The Committee notes the adoption on 1 December 1998 of the Act on Equal Opportunities, which entered into force on 1 March 1999. The Committee notes with satisfaction that section 5(4) of the Act expresses the principle of the Convention, establishing that, when implementing equal rights for women and men at the workplace, employers must provide equal remuneration for work of equal value. The Committee further notes that section 6(1) of the Act establishes a presumption of discrimination on the part of the employer if, because of the person's sex, the employer applies to an employee less (more) favourable terms of employment or payment for work.

2. Section 10 of the Act on Equal Opportunities establishes the Office of the Equal Opportunities Ombudsman and charges the Ombudsman with the implementation of the Act. The Committee notes that any person shall have the right to file a complaint with the Equal Opportunities Ombudsman concerning the violation of equal rights (section 18(1) of the Act). The Committee notes that the Ombudsman is required to submit an annual report to the Seimas concerning the implementation of the Act and the activities

of the Office of the Equal Opportunities Ombudsman, as well as to submit recommendations to state government and national administration institutions on the revision of legal acts and the policy priorities for the implementation of equal rights (sections 12(2) and 27 of the Act). The Committee would be grateful if the Government would supply a copy of the Ombudsman's report, as well as information on the number of equal pay complaints filed with the Ombudsman during the reporting period, the action taken and the outcome.

Madagascar (ratification: 1962)

1. The Committee notes the Government's indications in relation to the observations made by the Union of Commercial On-Board Staff (PNC) of Air Madagascar concerning the unequal remuneration arising out of the difference in the retirement age for male and female on-board staff, which is set at 50 years for men and 45 for women. The Government states that, according to Air Madagascar, the limitation on the age of female on-board staff has been adopted due to the early ageing and nervous fatigue caused by the specific nature of their work. Air Madagascar also states that the age at which on-board staff cease to fly is not the same as a retirement age, since on-board staff are then transferred to a ground job, as indicated in section 12 of the "conditions of work and remuneration of commercial on-board staff", approved by the trade union, the labour inspectorate and the labour tribunal. Furthermore, according to Air Madagascar, the prohibition of discrimination between the sexes with regard to remuneration, whether under the terms of Convention No. 100 or Act No. 94-029, does not concern the retirement age, which relates to other conditions of work in regard to physiological characteristics.

2. The Committee wishes to point out, in relation to this matter, that although the determination of different retirement ages for men and women constitutes a difference of treatment which is covered primarily by Convention No. 111, it has an indirect impact on equal remuneration in view of the fact that remuneration is directly linked to employment. The same applies to the determination of a different age for ceasing to work as on-board staff. Furthermore, the Committee notes that the Arbitration Council of the Court of First Instance of Antananarivo ruled on this issue on 18 November 1997, when it declared section 12 of the "conditions of work and remuneration of commercial on-board staff" inapplicable on the grounds that it established discrimination on the ground of sex. The Committee endorses this conclusion concerning the existence of discrimination. However, the Committee regrets that a legal void is currently giving rise to an obstacle preventing the resolution of this dispute, following the contesting of this arbitration decision by the company. It encourages the Government to make every effort to resolve the situation and to take measures rapidly to fill the legal void which gave rise to this obstacle. It notes in this respect that the new draft Labour Code, section 217, states that arbitration awards, when they have been issued, accompanied by the reasons for the award and immediately notified to the parties, are final and without appeal and bring an end to the dispute.

Nigeria (ratification: 1974)

The Committee notes with regret that the Government's report has not been received. It trusts that a report will be supplied for examination by the Committee at its

next session and that it will contain full information on the matters raised in its previous observation, which reads as follows:

1. The Committee has observed that, since ratifying the Convention more than 20 years ago, the Government has not furnished information which provides an adequate basis for assessing the application of the Convention. For the most part, the Government's reports have contained the type of broad statement repeated in its latest brief report, indicating that the principle of the Convention is applied and that no contraventions of its practical application have been reported. As concerns the legislative framework, the Government has relied on the narrow formulation of equal pay for equal work, contained in article 17(3)(c) of the Constitution and on the provisions of the National Minimum Wage Act, 1981, which exclude a large section of the workforce from its scope (namely, workers in establishments employing fewer than 50 persons, part-time workers, workers paid on commission or on a piece-rate basis, seasonal workers in agriculture, workers in merchant shipping or civil aviation). While the Government indicated previously that the National Labour Advisory Council was to review the coverage of the Act, no reference has been made to this matter in the Government's present report. Likewise, the Government has not provided sufficient information on the practical application of the Convention.

2. In its latest report, the Government states that sections 10 and 11 of the Wages Boards and Industrial Councils Act, 1990, deal extensively with the Convention. The Committee asks the Government to furnish the legislation and to provide information on its implementation. The Committee has located other recently enacted legislation – the National Salaries and Wages Commission Decree (No. 99 of 1993) – which appears to be of significance to the application of the Convention, as it provides for the establishment of a commission with wide functions, *inter alia*: to advise the federal Government on national incomes policy; to encourage research on wages structure (including industrial, occupational and regional and any other similar factor, income distribution and household consumption patterns); to establish and run a data bank or other information centre relating to data on wages and prices or any other variable and for that purpose to collaborate with data collection agencies to design and develop an adequate information system; to examine, streamline and recommend salary scales applicable to each post in the public service; and to examine the salary structures in the public and private sectors and recommend a general wages framework with reasonable features which are in consonance with the national economy. The Committee requests the Government to provide information in its next report on the functioning of the Commission, particularly as concerns any progress being made to collect data that would illustrate the extent to which the Convention is being applied in practice. It also hopes that any review of salary structures in the public and private sectors will take account of the requirements of the Convention and asks the Government to indicate any progress made in this regard.

3. Recalling paragraph 253 of its 1986 General Survey on equal remuneration, the Committee observes that it is hard to accept statements suggesting that the application of the Convention has not given rise to difficulties or that full effect is given to it, without further details being provided. It therefore trusts that the Government will reply to the above requests for information with as much detail as possible. The Committee also reminds the Government that the Office may be called upon to provide advice and technical assistance concerning the application of the Convention.

[...]

The Committee is raising other points in a request directly addressing the Government.

Norway (ratification: 1959)

1. The Committee notes the information contained in the Government's detailed report, including the statistical data supplied concerning the average annual wages of men and women in different sectors of economic activity. The Committee also notes the comments of the Federation of Norwegian Business and Industry (NHO), the Norwegian Federation of Trade Unions (LO), the Confederation of Academic and Professional Unions in Norway (AF), the Confederation of Vocational Unions (YS), the Norwegian Union of Teachers and the Federation of Norwegian Professional Associations (Akademikerne).

2. The statistical data contained in the Government's report indicates that the wage gap between men and women has remained stable from 1996 to 1998. The Government indicates that women's relative pay levels in all categories for which figures were available improved in the 1990s, with the wage gap narrowing most among civil servants and employees in retail trade. The Government states that a weighted average of all groups shows that women's average annual wage was 85 per cent of men's corresponding annual wage in 1990, increasing to 86 per cent in 1998.

3. The Government indicates that the principle of the Convention needs to be implemented through a variety of methods, given that pay disparities between women and men take different forms. The Government distinguishes between three types of gender-based salary discrimination: job discrimination (where women and men do not have equal access to jobs and promotion); direct discrimination (women receive lower pay than men in the same job and with the same qualifications); and evaluation discrimination (jobs where women predominate are less well paid than comparable jobs where men predominate).

4. The Government recognizes that the social partners can ensure the application of the principle of the Convention through the wage negotiation process. The Committee notes from the report that Norwegian employers' and workers' organizations approach the issue of pay discrimination differently. The NHO maintains that pay disparities are due to occupational segregation and that pay differences are based above all on differences in job categories. Accordingly, the NHO believes that the focus should be placed on enterprise recruitment policies, arguing that pay disparities will decrease once a gender balance is achieved.

5. In contrast, the LO views pay equality between men and women as a low-pay issue, holding that wage settlements with a low-pay profile will benefit women, who are often concentrated in lower paid occupations and in the lowest job categories. Other workers' organizations – the AF, the YS and the Norwegian Union of Teachers – view pay equality as a problem of job evaluation in respect of women's jobs. Akademikerne favours local pay negotiations and asserts that the problem of pay disparities should be resolved at the enterprise level.

6. The Government points out that enterprises in the private and municipal sectors are free to decide whether or not to initiate systematic pay equality efforts, whereas such activity is compulsory in the Government sector. As a consequence, discussions are under way to determine whether an order with the force of law could promote systematic pay equality efforts at the local level. The Government also indicates that an agreement on a new activities programme for gender equality was concluded by the NHO, LO and

YS at the pay settlement in 2000. The agreement places particular emphasis on pay conditions and the development of pay systems based on criteria taking the gender dimension into account. The Committee notes this development with interest and hopes that the social partners will reach agreement to promote improved application of the Convention.

7. The Committee notes that the Equal Status Act is still undergoing revision in collaboration with the social partners. Section 5 of the Act, which limits the application of the equal pay principle to work in the same enterprise is under review and consideration is being given in this context to expanding the scope of comparison between jobs. The Government indicates that removal of the limitation could be useful in implementing the principle of the Convention, particularly in the light of the persistence of occupational segregation in Norway's labour market. The Government acknowledges in its report that the main reason for existing pay disparities is that men and women hold different positions, a factor which the Government attributes to job discrimination as well as to women's and men's occupational choices. The Committee also notes that, according to the Equal Status Ombudsman, both the Ombudsman and the Equal Status Appeals Board apply section 5 in such a manner that there is nothing to prevent comparison of jobs in two different trades where working conditions and pay are regulated by different collective pay agreements. Therefore the Ombudsman maintains that the Act is interpreted and enforced in accordance with Norway's international obligations and in agreement with the Job Evaluation Committee. The Committee asks the Government to consider expanding the scope of section 5 of the Equal Status Act to permit comparisons between jobs in different enterprises and asks the Government to keep it informed of developments in this respect and to supply a copy of the Equal Status Act, once amendments are adopted.

8. The Committee is addressing a request on other points directly to the Government.

Saint Lucia (ratification: 1983)

The Committee notes with regret that, for the ninth consecutive time, the Government's report has not been received. It trusts that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous observation which reads as follows:

1. Referring to its previous comment where the Committee noted that some collective agreements in agriculture include lower wage rates for women, the Committee requests the Government to indicate the measures taken or contemplated to ensure that wage rates (in collective agreements) are not differentiated on the basis of sex.

2. The Committee hopes that the Government will take the opportunity afforded by its review of laws to ensure legislative conformity with the provisions of the Convention. In this regard, the Committee draws the attention of the Government to the comments made in its 1990 general observation, where emphasis was also placed on the importance of embodying the principle of equal pay for work of equal value in national legislation. The Committee requests the Government to provide in its next report details on any progress realized to achieve legislative compliance with the Convention.

3. The Committee also requests the Government to provide the information requested over the years in the Committee's previous requests concerning the objective appraisal of

jobs (*Article 3*) and the measures taken in cooperation with employer's and workers' organizations to give effect to the provisions of the Convention (*Article 4*).

Sri Lanka (ratification: 1993)

1. Recalling its previous comments on the existence of different wage rates for men and women in the tobacco trade and different time piece-rates for men and women in the cinnamon trade, the Committee notes that the Government continues to explore the possibility of having a uniform wage rate determined by the Commissioner of Labour under section 33(1) of the Wages Boards Ordinance. It urges the Government to take such steps as are necessary to eliminate wage differentials between men and women in the tobacco and cinnamon trades as required under *Article 2 of the Convention* and asks the Government to continue to provide full information on all measures taken or contemplated.

2. *Article 4*. The Committee notes that the National Labour Advisory Council has not considered the issue of equal pay for the past five years. It notes also that the Lanka Jathika Estate Workers' Union has reiterated its earlier comments regarding non-compliance with *Article 4* of the Convention by the Government. The Committee therefore recalls its previous comments on the value of cooperating with employers' and workers' organizations to implement the provisions of the Convention and asks the Government to provide further information in its next report on particular steps taken in this regard.

3. The Committee is raising other points in a request addressed directly to the Government.

Sweden (ratification: 1962)

The Committee notes the information contained in the Government's report as well as the supplementary documentation provided. It also notes the comments of the Swedish Agency for Government Employers and the Swedish Trade Union Confederation (LO).

1. The Committee notes that, according to data provided by Statistics Sweden (SCB), existing differences between men's and women's earnings have not diminished in the 1990s. The report indicates that women's earnings in 1997 averaged 83 per cent of men's. Pay differentials were greater in the public sector than in the private sector. The wage gap was largest in county councils, where women's pay was 71 per cent of men's. In the private sector, the pay of female salaried employees was 75 per cent of men's pay. The wage gap was narrower for manual workers in the private sector, where women's pay was 89 per cent of men's. The Government attributes the pay differentials in general to differences in training, occupation and position. The Government states that pay differentials in individual sectors are partly due to the different occupations in which women and men are concentrated, for example, in the county councils, where the majority of nurses are women and the majority of doctors are men. The Committee notes that, according to the SCB, when allowance is made for training, occupation and age, female salaried employees in the private sector earned 93 per cent of men's pay. However, the Government indicates that the pay differential for women and men in the same occupation varies from one sector to another, with women's pay equalling 78-79 per cent of men's pay among business economists, sales staff and brokers. Thus, the

Government states that there are some pay differentials which cannot be attributed to factors such as training, occupation or age.

2. The Committee notes from the report that the frame funding system, introduced in 1993-94, required national authorities to give an account of efforts made to chart and eliminate unfair pay differentials between women and men. The Government indicates that its analysis of the pay policies of national authorities shows women to have a consistently lower average rate of pay than men. Further, the Government states that women have consistently received smaller pay increases than men. The Government indicates that this is due in part to the fact that higher-level employees, a category in which women are under-represented, tend to receive bigger pay increases. In this respect, the Swedish Agency for Government Employers, which provides support for wage setting in the national administration, states that the annual statistics which it compiles on the earnings of salaried staff of the national administration show that women's average pay improvements between 1998 and 1999 were higher than men's, particularly at the senior levels.

3. The LO indicates that there is a high level of gender equality in Sweden, with Swedish women being equally represented in decision-making bodies and in the workplace. The LO attributes existing pay inequalities to gender-based occupational segregation in the labour market, noting that women mainly work in the public and commercial sectors, where wages are lower. The LO recommends that measures be taken to reduce or eliminate gender divisions in the labour market as well as to increase women's access to training that would permit them to advance in their employment. The LO does not feel that direct salary discrimination is frequent and considers that individual cases are immediately corrected when identified.

4. The Swedish Agency for Government Employers indicates that the central collective bargaining parties in the national government sector have, for some years, been in agreement that pay equality is a priority issue, and the parties at both the central and local levels of the administration have been active in working towards achieving pay equality. In this respect, the Agency indicates that it has produced a computer program for wage mapping, to assist national authorities to avoid unequitable wage differentials between men and women. The Committee would appreciate receiving additional information regarding the nature of the program, the manner of its implementation and the results achieved.

5. The Committee notes the various measures taken by the Government to reduce pay differentials between women and men. It notes that the National Institute for Working Life, in association with the SCB, has begun work on developing pay statistics to serve as a basis for a more in-depth analysis of pay differentials between women and men. The Committee further notes that the SCB is exploring the feasibility of an individually based occupational register, designed to enhance the comparability of different jobs in connection with analyses of gender-based pay differentials. Noting that pay differentials can be effectively reduced through a combination of measures, the Committee would be grateful if the Government would continue to provide information on all initiatives taken or contemplated relevant to application of the principle of equal remuneration and to indicate progress made in this regard.

The Committee is addressing a request directly to the Government on other points.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Albania, Algeria, Angola, Benin, Bolivia, Burundi, Cameroon, Cape Verde, Central African Republic, Comoros, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Denmark, Dominica, Dominican Republic, Egypt, Estonia, Finland, France, Gabon, Guatemala, Guinea, Guinea-Bissau, Haiti, Iceland, Italy, Jamaica, Republic of Korea, Kyrgyzstan, Libyan Arab Jamahiriya, Lithuania, Madagascar, Mali, Mongolia, Niger, Nigeria, Norway, Paraguay, Philippines, Romania, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Sri Lanka, Swaziland, Sweden, Syrian Arab Republic, Tajikistan, Trinidad and Tobago, United Arab Emirates.*

Convention No. 101: Holidays with Pay (Agriculture), 1952

Sierra Leone (ratification: 1961)

The Committee notes once again with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its direct request of 1993, which reads as follows:

The Committee notes the declaration in the Government's report that its previous comments would be brought to the attention of the Agricultural Negotiating Trade Group Council so that they might be taken into consideration in the next round of negotiations over terms and conditions of employment. In its previous comments, the Committee referred to section 12(a) of Government Notice No. 888 of 5 December 1980, which permits the deferral of annual leave for a period of up to two years or for longer with the employee's and the union's consent. It recalls that *Article 1 of the Convention* provides that workers covered by the Convention should be granted an annual holiday with pay and that, under *Article 8*, any agreement to relinquish the right to annual holiday with pay, or to forgo such a holiday, must be void. The Committee hopes that the necessary measures will be taken in the very near future to bring section 12(a) of Government Notice No. 888 into conformity with the Convention and requests the Government to indicate the progress made in this regard in its next report.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Comoros, New Zealand.*

Convention No. 102: Social Security (Minimum Standards), 1952

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the Government's report received in June 1998. It notes with regret that the Government has provided no element of reply to the Committee's previous observation.

In this situation, the Committee wishes to express its deep concern that, since the adoption of the Supreme Decree No. 22-578 of 13 August 1990, the Bolivian social security

system no longer provides for the payment of family benefit as prescribed by *Article 42, Part VII (Family benefit), of the Convention*. It would like to remind once again that in ratifying Convention No. 102 and freely accepting its obligations in respect of *Part VII*, the Government placed itself under a legally binding international obligation to guarantee in its national law and practice the provision of the family benefit to the persons protected. In the light of the above, the Committee strongly hopes that the Government will not fail to adopt in the near future the necessary measures to re-establish a family benefit scheme conforming to the provisions of the Convention.

The Committee is further concerned with the fact that the Government does not reply to the communication from the World Federation of Trade Unions, a copy of which was sent to it in August 1997 and which called for a factual analysis of the application of Convention No. 102 by the Government of Bolivia in the light of the new Law on Pensions, No. 1732 of 1996. In this respect the Committee notes the further communication of 14 June 1999, transmitted to the Government the same month, by the Central Obrera Boliviana (COB) alleging violation of the basic principles of social security established by Conventions Nos. 102 and 128. The Committee takes up these questions in detail in its comments under the latter Convention and would like the Government to refer to them. It trusts that the Government's next report will contain detailed information on the applicable branches of Convention No. 102 in the light of the social security legislation currently in force in Bolivia, as well as a detailed reply to the observations made in this respect by the abovementioned trade union organizations.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Costa Rica (ratification: 1972)

I. The Committee notes the information supplied by the Government in its latest report.

1. It notes with interest the adoption of the Regulation of 29 June 1995 concerning invalidity, old-age and survivors' insurance. The Committee notes that the Regulation still does not appear to envisage payment, in compliance with *Part V, Article 29, paragraph 2(a), of the Convention*, of a reduced old-age benefit to a person protected who has completed a qualifying period of 15 years of contributions. It requests the Government to indicate the provisions which govern payment of this benefit.

2. The Committee also notes the Workers' Protection Act adopted on 24 January 2000. It notes that one of the purposes of this Act is to lay down the framework for the establishment of a compulsory supplementary pensions scheme, based on individual capitalization. It requests the Government to supply information on the impact of this Act, in fact and in law, on the relevant parts of the Convention.

II. With reference to its previous comments, the Committee notes that the Government's report does not reply to most of the questions raised. It is therefore bound to reiterate the points raised previously.

1. The Committee again asks the Government to supply the information required by the report form, *Part VI, Article 65*, of the Convention, so that it can ascertain the real impact of pension increases in relation to the evolution of the general level of earnings or the cost-of-living index. It also asks the Government to supply in each report information on new increases made in this regard.

2. *Part VI (Employment injury benefit), Articles 34, 36 and 38 of the Convention (in conjunction also with Article 69).* In its previous comments, the Committee requested the Government to take the necessary measures to amend sections 218, 228-232, 237-239 and 243 of Act No. 6727 of 1982 in order to bring them all into full conformity with the abovementioned provisions of the Convention concerning: (a) the nature of medical care, which must correspond to the provisions of *Article 34* of the Convention and be provided free of charge throughout the contingency (namely, until the recovery or the stabilization of the invalidity of the person); (b) the granting of cash benefits, also throughout the contingency, in the event of a minor or partial disability or of death. Under the abovementioned sections of Act No. 6727, such benefits are, in both cases, paid for a period of five or ten years depending on circumstances, whereas the Convention stipulates that they must be provided throughout the victim's life and to dependants for as long as they fulfil the conditions prescribed.

In its previous report, the Government indicated that negotiations were continuing between the National Social Security Institute and the Costa Rican Social Security Fund and that study was continuing on the draft reform of Act No. 6727. The Committee expresses the hope that the Bill in question will be adopted in the near future, with possible technical assistance from the ILO, and that the revision will bring national legislation into full compliance with the Convention.

In addition, the Committee would be grateful if the Government would supply detailed information on the questions raised in a direct request.

Cyprus (ratification: 1991)

With reference to its previous comments concerning *Part III (Sickness benefit), Article 18*, and *Part XIII (Common provision), Article 69(f)*, in relation to *Part IV (Unemployment benefit) of the Convention*, the Committee notes with satisfaction, on the basis of the information provided by the Government in its sixth annual report on the application of the European Code of Social Security, that section 32 of the Social Insurance Law has been amended by section 2 of the Social Insurance (Amendment) Law No. 80(I)/98 to extend the entitlement to sickness benefit to 26 weeks for each period of interruption of employment, thus giving full effect to *Article 18* of the Convention, and that section 35(2)(a) of the Social Insurance Law has been given a restricted interpretation in the instructions issued to the Unemployment Benefit Section of the Department of Social Insurance, so as to permit the disqualification of an insured person for unemployment benefit solely in cases of wilful misconduct, in accordance with *Article 69(f)* of the Convention.

Japan (ratification: 1976)

The Committee notes the communications from the Pensioners' Union (Kobe Port Liaison Committee) dated 1 September 1999 and 1 September 2000, containing observations on the alleged deterioration of the dockworkers' compensation system and encouraging the ratification by Japan of the Dock Work Convention, 1973 (No. 137). It also notes the Government's communication stating its intention to submit its comments on the Union's observations in its next annual report on Convention No. 102. The Committee therefore hopes that the Government's next report will contain a reply to the

comments to the aforementioned organization as well as to the Committee's previous direct request.

Mauritania (ratification: 1968)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

With reference to its previous comments, the Committee notes that the Government's report submitted in March 1999 is not a detailed report and is nothing more than a copy of its report already submitted in November 1996. The Committee therefore again addresses the text of its previous direct request to the Government, in the hope that the Government's next report will be a detailed report and contain the information requested.

Mexico (ratification: 1961)

1. The Committee notes with interest the particularly detailed information, including statistical data, provided by the Government in reply to its previous comments made following the coming into force in 1997 of the new legislation which associates the private sector with the achievement of the objectives pursued by the social security system. It also notes the discussion in the Committee on the Application of Standards at the 87th Session of the Conference (Geneva, 1999). Moreover, the Committee notes the observations made by the Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN) on the application of the Convention, transmitted by the Government with its report.

The Committee wishes to draw the Government's attention to and receive information on the following points.

Part II (Medical care). The Committee notes that, in accordance with section 89 of the Social Security Act, the Mexican Social Security Institute (IMSS) may provide the medical assistance for which it is responsible according to the three following procedures: (i) directly, through its own personnel and facilities; (ii) indirectly, by means of agreements with other public or private providers of care; and (iii) indirectly, through the conclusion of agreements with enterprises with their own medical services. The Committee requests the Government to provide detailed information in its next report on the implementation in practice of section 89, points II and III, with an indication of the volume of medical care thus transferred (number of workers and enterprises concerned, overall cost of medical assistance, etc.). The Committee would also be grateful if the Government would provide additional information on the agreements concluded with other providers of care in the private sector, including with enterprises which have their own medical services, and particularly on the manner in which the protection envisaged in *Part II of the Convention* is ensured in such cases. Please also indicate whether private sector care providers may require the sharing by insured persons in the cost of medical care. Finally, the Committee would be grateful if the Government would provide examples of the agreements concluded under the terms of section 89, points II and III, of the Social Security Act.

Part V (Old-age benefit), Articles 28, 29 and 30 of the Convention. 1. In its previous comments, the Committee noted that, for persons who fulfil the qualifying conditions for an old-age pension as set out in the legislation, the level of the pension is not determined in advance, but depends on the capital accumulated in the individual

accounts of workers, and particularly the return obtained on such capital, which has to be entrusted to the management of a retirement fund administration company (AFORE) selected by the worker. However, under the terms of section 170 of the Social Security Act, the State guarantees workers who fulfil the age conditions and the qualifying period set out in section 162 of the Social Security Act with a "guaranteed pension", the amount of which is equivalent to the general minimum wage for the Federal District. In this respect, the Committee notes with interest, from the statistical information that it requested on the level of the "guaranteed pension", that the latter should attain the percentage prescribed by the Convention for a standard beneficiary, having recourse to *Article 66* of the Convention. However, it would be grateful if the Government would indicate the manner in which the ordinary adult male labourer has been determined (*Article 66, paragraphs 4 or 5*). It would also be grateful if in future the Government would provide the statistics requested on the wage of the above labourer and on the old-age benefit on the same time basis, in accordance with *Article 66, paragraph 2*, of the Convention.

2. (a) The Committee would be grateful if the Government would provide detailed information in its next report on the various fees which may be charged by AFORES and SIEFORES (companies specializing in the investment of retirement funds), and by insurance companies, with an indication of the percentage represented by such fees in relation both to the capital accumulated in individual accounts and to pensions.

(b) The Committee also requests the Government to provide detailed information on the methods used for the calculation of pensions by insurance companies, with an indication of the manner in which the life expectancy of pensioners is calculated and whether the old-age pensions paid to women workers are calculated on the same basis as those provided to male workers, and whether in particular different mortality tables are taken into account for each sex. Please also indicate whether insurance companies use their own mortality tables or tables established by the State.

3. In its previous comments, the Committee drew the Government's attention to *Article 29, paragraph 2(a)*, of the Convention, which provides that a reduced old-age benefit shall be secured at least to a person protected who has completed, prior to the contingency, a qualifying period of 15 years of contribution or employment. In its report, the Government recalls that insured persons who do not meet the qualifying condition of 1,250 weeks of contributions set out in sections 154 and 162 of the Social Security Act at the time that they become entitled to old-age benefits, may either withdraw the balance of their individual account in one transaction, or continue to pay contributions to complete the missing weeks in order to qualify for a pension. It adds that, if the insured person has paid contributions for 750 weeks, she or he is entitled to benefits in kind under sickness and maternity insurance. The Committee notes this information, but wishes to draw the Government's attention to the fact that neither the possibilities offered to insured persons under section 162 of the Social Security Act, nor the right to benefits in kind under sickness and maternity insurance, which is also granted to all pensioners under the terms of section 84 of the Act, can be considered sufficient to give effect to *Article 29, paragraph 2*, of the Convention. In these conditions, it hopes that the Government will be able to re-examine the situation and that it will indicate the measures which have been taken or are envisaged to secure a reduced periodical old-age benefit to a person protected who has completed, prior to the contingency, a qualifying

period of 15 years of contribution or employment, in accordance with the provisions of the Convention on this point.

4. In reply to the Committee's previous comments concerning *Article 30* of the Convention (payment of the benefit throughout the contingency), the Government states that, in relation to the "programmed retirement" method, as set out in section 159 of the Social Security Act, the beneficiary is entitled to be provided with a "guaranteed pension" once the capital accumulated in the individual account of the insured person has been exhausted. The Committee notes this information with interest.

Part XI (Standards to be complied with by periodical payments), Articles 65, paragraph 10, and 66, paragraph 8 (review of benefits). The Committee notes the information provided by the Government on fluctuations in the cost-of-living index, earnings and benefits, which shows that, with the exception of survivors' benefit, effect is given to these provisions of the Convention requiring the adjustment of long-term benefit for all contingencies. Indeed, according to the statistics provided, the increase in survivors' benefit between 1 July 1997 and 30 May 2000 is far from following that of the general level of earnings and the cost of living since, according to the statistics provided by the Government, the increase is only 34.72 per cent for the average increase per beneficiary and 22.39 per cent for the increase in benefits for a standard beneficiary. The statistics provided show that, for the same period, the rise in the cost-of-living index was 47.23 per cent, while the earnings index rose by 59.10 per cent. The Committee would be grateful if the Government would re-examine the matter in the light of the above comments and hopes that the Government's next report will contain information on the measures which have been taken or are envisaged to give better effect to *Article 65, paragraph 10*, of the Convention with regard to survivors' benefit.

Part XIII (Common provisions), Article 71. 1. Financing. The Committee notes the information provided by the Government, and particularly the statistics on the financing of benefits. It recalls that the capital accumulated in individual accounts serves to finance all long-term benefits. It would be grateful if the Government would therefore indicate whether the statistics on the financing of benefits include the contributions of workers and employers to the individual accounts referred to in sections 191 and 192 of the Social Security Act.

The Committee also requests the Government to indicate the manner in which effect is given to *Article 71, paragraph 2*, of the Convention with regard to employment injury benefit, in view of the fact that the capital accumulated in the individual accounts of workers contributes to the financing of these benefits under the terms of sections 58 and 64 of the Social Security Act.

2. Administration and control of the social security system (Articles 71, paragraph 3, and 72, paragraph 1). The Committee notes the information provided by the Government in its report. In particular, it notes that the financial and actuarial report of the Mexican Social Security Institute for 1999 is currently under discussion, in accordance with section 260 of the Social Security Act. The Committee requests the Government to provide a copy of this report when it has been adopted.

Furthermore, the Committee considers it particularly necessary, to enable the Government to take the measures required to give full effect to *Article 71, paragraph 3*, that a global actuarial evaluation be undertaken of the whole of the system, including the various pension schemes which includes and recapitulates the debts and commitments of

the State arising out of both the former and the new social security systems and which includes the proportion represented by the IMSS, the INFONAVIT and the SAR in such financing and commitments. It requests the Government to indicate whether such an evaluation exists and, if so, to provide a copy of it.

3. *Participation of persons protected in the management of schemes (Article 72, paragraph 1).* In reply to the Committee's comments, the Government indicates that, in accordance with sections 29 and 49 of the Retirement Savings Act, the AFORES and the SIEFORES must be administered by an executive board which includes at least two independent advisers, who represent the interests of the workers. However, the Committee notes that, although sections 29 and 49 of the above Act indeed refer to independent advisers, they do not establish that these must be advisers representing the interests of the workers. In these conditions, the Committee would be grateful if the Government would indicate the relevant legal provisions, administrative measures or regulations.

The Committee would also be grateful if the Government would indicate the manner in which the representatives of the persons protected participate in the management of insurance companies which intervene when workers take their retirement and which therefore form an integral part of the social security system.

Peru (ratification: 1961)

The Committee notes that the Government has requested those responsible for the Social Health Insurance Scheme (ESSALUD), the Insurance Standards Office (ONP) and the Health Providers Superintendence (SEPS) to provide, in their fields of competence, the necessary information for the preparation of the report on the application of this Convention and that this information will be provided as soon as it is available. Since a detailed report on the application of the Convention has still not been provided to the Office, the Committee is bound to repeat its previous observation, which read as follows:

Health care scheme

In its previous comments, the Committee had requested the Government to provide detailed information on the implementation of the new health care system following the adoption of Act No. 26790 to modernize social security in the area of health and of its implementing regulations in Supreme Decree No. 009-97-SA, which entered into force in 1997. The Committee had therefore asked the Government to provide a detailed report giving information on the legislation and the practice with regard to each provision of the Convention. In its report, the Government indicates that, in view of the recent publication of this new legislation, it is unable at this stage to provide information on the implementation of the new system. Moreover, in its report on the Sickness Insurance (Industry) Convention, 1927 (No. 24), the Government sets out a number of general observations. The Committee notes this information and the adoption of Supreme Decree No. 001-98-SA, a copy of which is provided by the Government. The Committee also notes the observations made on 22 May 1998 by the Single Trade Union of Technicians and Specialist Auxiliary Staff of the Peruvian Social Security Institute alleging among other things that the purpose of Act No. 26790 and its implementing regulations is to dismantle social security and the Peruvian Social Security Institute (IPSS) by placing them in the hands of private individuals and foreign capital. In its reply, the Government denies this allegation and emphasizes that it has no intention of privatizing social security in the country, and that the IPSS should be

regarded as administering the general scheme and the health care providers (EPS) as an option available to workers.

The Committee recalls that Act No. 26790 to modernize social security in the area of health and Supreme Decree No. 009-97-SA provide for the involvement of the private sector in the area of health care. The health care services provided by the IPSS are complemented by the health care plans and programmes of the health care providers (EPS). The latter can be public or private enterprises or institutions independent of the IPSS whose sole purpose is to provide health care services through their own infrastructure or third-party facilities. In this new system, workers who are members of private health care programmes will receive cash medical benefits from the IPSS in the event of serious illness and from their health care provider (or their employer's own health care services) for routine ailments. Employers providing health care, either through an EPS or through their own services, are given a credit for the amount of their contributions to the IPSS (sections 15 and 16 of the Act). The Act in principle guarantees that workers may freely choose whether to join the IPSS or an EPS (section 15 of Act No. 26790 and sections 46, 50, 51 and 52 of Supreme Decree No. 009-97-SA).

Given the fundamental changes made by the new legislation in the area of health care, the Committee once again expresses the hope that the Government will provide detailed information in its next report on the legislation and the practice with regard to each of the Articles of the Convention, in accordance with the report form. While awaiting this information, the Committee wishes to draw the Government's attention to the following points.

Part II (Medical care), Article 10 of the Convention (in conjunction with Article 8). Section 12 of Supreme Decree No. 009-97-SA specifies that curative medical care must include both out-patient and hospital in-patient medical care, medication, prostheses, necessary orthopaedic appliances and rehabilitative services. As regards maternity benefits, they should cover care during pregnancy, confinement and the postnatal period. Under section 9 of Act No. 26790 and sections 11 and 20 of the above Supreme Decree, the benefits provided may not be inferior in scope to the minimum health plan set out in Annex 2 of the Supreme Decree, read in conjunction with Annex 3. Care comes under either simple cover (*capa simple*) or complex cover (*capa compleja*). Simple cover includes the most frequent and least complex types of medical treatment and is described in Annex 1 of the Supreme Decree. This simple cover is paid for either by the IPSS or by enterprises, through their own services or through health care plans contracted with an EPS. Complex cover is provided by the IPSS (section 34 of the Supreme Decree). Moreover section 90 of the Supreme Decree describes how in practice the responsibilities are to be apportioned between the EPS and the IPSS.

The Committee hopes that the Government will provide detailed information on the implementation of the abovementioned provisions of the Act and of the Supreme Decree so as to allow it better to assess the application in practice of *Article 8* of the Convention, according to which contingencies covered must include any morbid condition, and *Article 10* of the Convention, which specifies the nature of medical benefits which must be provided. In this regard, the Committee also hopes that the Government will indicate which provisions govern the domiciliary visits by general medical practitioners provided for in *Article 10, paragraph 1(a)(i)*. Finally, the Committee hopes that the Government will provide with its next report examples of insurance policies concluded with an EPS, and specimens of membership forms.

Part II (Medical care), Article 9, Part III (Sickness benefit), Article 15, and Part VIII (Maternity benefit), Article 48. The Committee hopes that the Government will provide detailed information on the geographical coverage of the new health care system in respect

both of the IPSS and of the EPS, and indicate the regions in which the EPS have not yet been established.

Part XIII (Common provisions) (in conjunction with Parts II, III and VIII). Article 71. The Committee notes the establishment of the Superintending Board of health care providers (SEPS) which is responsible for authorizing, regulating and supervising the activities of the EPS and for ensuring the correct use of the funds managed by those bodies (section 2(d) of the aforementioned Supreme Decree). The SEPS is a decentralized public health body financed by levies from the bodies subordinate to it. The Committee hopes that the Government will provide detailed information on the manner in which the SEPS carries out supervision in practice, including copies of any inspection reports or other relevant official documents. In this regard, the Committee notes that, under section 2 of the Act, and sections 2(a) and 3 of the Regulations, the IPSS is responsible for administering social security in the field of health care. The Committee would like the Government to clarify the manner in which the IPSS carries out this mandate, in particular with regard to the EPS.

The Committee also hopes that the Government will indicate whether, when the new system of social security in the field of health was established, any actuarial studies were undertaken into the financial viability of the participant bodies, in particular the IPSS which will continue to bear responsibility for the longer term and more complex cases of illness. If such studies were carried out, the Committee requests the Government to provide copies of any such studies. Studies of this kind appear to be all the more necessary given that enterprises which provide health care through the intermediary of the EPS or through their own services are entitled to a credit for workers' contributions equal in principle to 25 per cent of those contributions (sections 15 and 16 of the Act). The Committee hopes further that the Government will provide information on the manner in which the controlling authority will supervise the implementation in practice of the minimum health care plans, both by the EPS and employers' own health care services.

Article 72. The Committee hopes that the Government will provide detailed information on the participation of protected persons in the administration of the system, particularly in the EPS and employers' health care services. It also hopes that the Government will indicate whether persons protected are represented on the management boards of the SEPS.

Pensions scheme

I. Private pensions system

The Committee takes note of the Government's reports. It also notes the adoption of Supreme Decree No. 054-97-EF of 13 May 1997 approving the single ordained text of the Act respecting the private system of administration of pension funds. In its report the Government reiterates that the private pensions system cannot be examined within the scope of Convention No. 102. The Government refers to the conclusions of the Conference Committee on the Application of Standards, which in June 1997 agreed that the coexistence within the social security system of both a public and a private scheme, as has been the case in Peru since 1992, is not in itself incompatible with the Convention, since the Convention allows the minimum level of social security to be maintained through various methods. The Government also draws attention to the flexibility of Convention No. 102, which allows various approaches to attaining the same level of social security in order to take into account the wide range of national solutions and the rapid and constant developments in systems of protection. The Government points out that the national pensions system and the private pensions system were designed to coexist.

The Government indicates that workers entering the Peruvian labour market for the first time have, in principle, the option of joining one or other of the systems. However, the

Committee notes that, in the event a worker who has not subscribed to the private pensions system starts work, the employer is obliged to sign him up with the Pension Fund Administrator (AFP) of his choice, unless the worker indicates in writing within ten days that he wishes to join or remain in the National Pensions System (section 6(2) of Supreme Decree No. 054-97-EF). The Committee once again recalls that workers registered with an AFP can no longer rejoin the system administered by the Insurance Standardization Office (ONP). The Committee therefore considers that, in practice, the private pensions system which coexists with the public system may eventually replace it.

The Committee agrees that Convention No. 102 was conceived in a highly flexible manner and that it is possible to achieve the same level of social security through different approaches, the Conference having deliberately refused to adopt a rigid terminology. Nevertheless, the Convention embodies certain principles of general applicability for the organization and functioning of social security systems (Articles 71 and 72 of the Convention). In order to allow it to assess how effect is given to these principles and to other provisions of the Convention, the Committee again urges the Government to indicate in its next report how the questions set out below, which have been raised for a number of years, have been resolved.

1. *Part V (Old-age benefit), Articles 28 and 29, paragraph 1 (in conjunction with Article 65 or Article 66).* The Committee recalls that the rate of the pensions provided by the private pensions system does not appear to be determined in advance, since it depends on the capital accumulated in individual capitalization accounts, and particularly on the earnings from these accounts. The Committee takes note of the statistical data provided by the Government in September 1998 on the pensions adjustment factor and the monthly average pension per member; these data are not, however, sufficient to allow the Committee to assess the effect given to the Convention. The Committee once again recalls that, under Article 29, paragraph 1, read in conjunction with Articles 28 and 65 or 66, an average benefit at least equal to 40 per cent of the reference wage has to be secured to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution. The Committee would therefore be grateful if the Government would provide statistical data as requested in the report form, such as to allow it to make a full evaluation of the extent to which the old-age benefit, in all cases and irrespective of the type of system selected, attains the level prescribed by the Convention.

The Committee takes note of the seventh and final provision of Supreme Decree No. 054-97-EF which provides that the requirements and conditions such as to allow the private pensions system to guarantee a minimum retirement pension for its members shall be established by a Supreme Decree approved by the Ministry of Economics and Finance. The Committee recalls in this regard that Article 66 of the Convention can be applied within the framework of a private pensions system provided that the minimum old-age benefits payable to a standard beneficiary with 30 years of contribution are not less than the minimum amount required by the Convention (40 per cent of the wages of an ordinary adult male unskilled labourer within the meaning of paragraphs 4 and 5 of this Article). The Committee would therefore be grateful if the Government in its next report would provide a copy of the Supreme Decree adopted in implementation of the abovementioned final provision of Supreme Decree No. 954-97-EF, as well as statistical information required by the report form.

2. *Article 30.* The Committee again requests the Government to indicate the measures adopted or envisaged to guarantee the full application of this provision of the Convention (payment of the benefit throughout the contingency) with regard to the "programmed retirement" system, under which monthly withdrawals may be made from the account until the accumulated capital is exhausted, contrary to the above Article. In this

regard, the Committee also refers to its comments on the application of *Article 4 of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)*.

3. *Part IX (Invalidity benefit). Article 58.* The Committee again requests the Government to indicate how full effect is given to this provision of the Convention (provision of the benefit throughout the contingency or until an old-age benefit becomes payable) in the event of the permanent total invalidity of a worker who has selected the "programmed retirement" system.

4. *Part XIII (Common provisions). Article 71, paragraph 1.* The Committee notes that the cost of the benefits, certain administrative expenses and certain commissions are paid entirely by the worker who is insured under an AIP. Employers' contributions appear to be of a voluntary nature. According to *Article 71, paragraph 1*, "the cost of the benefits provided ... and the cost of the administration of such benefits should be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the member and of the classes of the persons protected". The Committee once again requests the Government to indicate the measures which have been adopted or envisaged to give full effect to the Convention in this respect.

5. *Article 71, paragraph 2.* The Committee again recalls that, under this provision of the Convention, the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their spouses and children. In order to be in a position to assess the effect given to this provision of the Convention, the Committee again requests the Government to provide in its next report the statistics requested in the report form under this Article of the Convention for both the private pensions and health systems and the schemes administered by the public system.

II. System of pensions administered by the ONP

The Committee again draws the Government's attention to the following specific points.

1. *Part V (Old-age benefit). Article 29, paragraph 2(a).* In the report received in September 1998, the Government acknowledges that Peruvian law does not envisage a case of the kind described in this provision. The Committee recalls that *Article 29, paragraph 2(a)*, provides that, where the old-age benefit is conditional upon a minimum period of contribution, a reduced benefit shall be secured to any insured person who has completed a qualifying period of 15 years of contribution or employment. The Committee again points out that the qualifying period laid down in the legislation is higher than the 15-year period established in the Convention. In these circumstances, the Committee can only ask the Government once again to take the necessary measures to ensure that persons protected are entitled to a reduced benefit after 15 years of contribution, as provided by this provision of the Convention.

2. *Part XI (Calculation of periodical payments). Articles 65 and 66.* The Committee notes the declaration of the Government according to which the maximum amount of the old-age pension paid by the National Pensions System is insufficient and is not proportionate to the workers' contributions. It also notes that, as of 1 January 1997, contributions to the National Pensions System will be not less than 13 per cent of the total insurable income of each worker. In addition, a National Public Savings Fund has been established, profits from which will be used to pay benefits to pensioners whose total monthly pensions do not exceed 1,000 new soles. The Committee hopes that the Government will be able to go on providing information on the measures taken or envisaged to increase the pensions paid by the National Pensions System so as to reach the level

prescribed by the Convention. The Committee further requests the Government to provide all statistics required by the report from under *Article 65 or 66*, including statistics on the review of long-term benefits to take account of changes in the cost of living. The Committee again recalls the importance that it attaches to the revision of the rates of current periodical payments in the case of long-term benefits, as required by *Article 65, paragraph 10, and Article 66, paragraph 8*.

III. Supervision of the private and public pensions systems

In its report, received in September 1998, the Government indicates that the State assumes overall responsibility for matters relating to the provision of benefits and takes any measures required for this purpose and for ensuring sound administration of institutions and services involved in implementing the Convention. The Committee would be grateful if the Government would indicate the specific measures adopted to apply *Article 71, paragraph 3, and Article 72, paragraph 2*, with regard both to the private and public pensions systems. In this context, the Committee recalls the importance of the regular actuarial studies and calculations required by *Article 71, paragraph 3*.

As regards the private system, the Committee takes note of the fact that, in accordance with section 23 of Supreme Decree No. 054-97-EF, investments made by the AFP are required to generate a certain minimum level of profits. Moreover the Government is responsible for determining criteria of minimum profitability (guaranteed by the statutory reserve formed from the AFP's own funds and other sources). The Committee would be grateful if the Government would also indicate in its next report all the measures taken to ensure the minimum level of profits generated by the AFP for its members and provide a copy of the Supreme Decree approved by the Minister of Economics and Finance.

IV. Participation of persons protected in the administration of the system

1. The Committee again requests the Government to indicate the measures which have been taken or are envisaged, in the context of the Private Pensions System, to give effect to *Article 72, paragraph 1*, of the Convention, according to which, where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to the legislature, representatives of the persons protected shall participate in or be associated with the management, in a consultative capacity, under prescribed conditions. In this context, the Committee refers to information supplied by the Government in its report on the application of Convention No. 35, and trusts that the Government will indicate any new measures taken to allow the participation by the persons protected in the administration of the Private Pensions System.

2. The Committee requests the Government to indicate the manner in which representatives of the persons protected participate in the management of the pensions system administered by the ONP, and in particular whether they are represented on the management bodies of the ONP.

V. The Committee recalls the observations received from the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao and notes the Government's statement to the effect that no authority can take up cases that are still before the courts or interfere with the work of the courts. The Committee refers to its previous comments and trusts that the Government will in due course provide copies of any final judicial decisions on cases brought in connection with the observations made by the Association of Retired Oil Industry Workers of the Metropolitan Area of Lima and Callao.

VI. While fully aware of the complexity of the issues raised, the Committee trusts that the Government, if it deems appropriate, will seek advice and assistance from the competent services of the Office on the organization and working of the public and private

social security systems in the area of health care. The Committee trusts the Government will redouble its efforts to provide the information requested in the present observation and in the direct requests for 1997 and 1998.

Spain (ratification: 1988)

Further to its previous comments, the Committee notes the detailed information sent by the Government in its report for the period 1996-98, particularly concerning the adjustment of pensions granted to the victims of occupational injuries in the event of permanent incapacity or to their survivors in the event of death (*Article 36, in conjunction with Article 65, paragraph 10*). The Committee also notes the comments of 27 February 1999 sent by the General Union of Workers (UGT), concerning the application in Spain of certain Conventions, including Convention No. 102, which were sent to the Government on 17 March 1999.

1. *Part II (Medical care) of the Convention.* The UGT alleges that the health system is constantly at risk of being privatized owing to certain forms of management or the exclusion of drugs from public funding. At the same time this usually results in a "adverse selection of risks", as the more costly treatments are left to the public sector while the most profitable go to the private sector. The year 1998 saw the last withdrawal from public funding of a long list of drugs amounting to 35 million pesetas. In the UGT's opinion, this policy of cuts in the health budget is wrong. Many of the drugs withdrawn are for the treatment of chronic diseases among the elderly, denying the latter their right to health and contravening *Article 10, paragraph 1(a)(iii)*, of the Convention. Geographically speaking, there has been a process of transfer to the autonomous communities based on financing alone rather than on the establishment of a single coordinated model. This is the cause of serious inequalities between the inhabitants of the various autonomous communities. As to effective medical care, in Spain the waiting lists for some specialist treatments can amount in effect to a denial of the right to health, since the delay aggravates the illness, which can prove fatal for the patient. The Committee asks the Government to send its comments on the UGT's observations.

2. *Part III (Sickness benefit), Article 18 (in conjunction with Part XIII (Common provisions), Articles 71, paragraph 3, and 72, paragraph 2).* In its previous comments, the Committee requested the Government to indicate the measures taken to ensure that employers meet their obligation to pay the sickness benefit from the fourth to the fifteenth day of incapacity, in accordance with section 131(1) of the General Social Security Act (LGSS) and Royal Decree No. 5/1992 of 21 July, and in particular to ensure that they do not substitute their own physicians for those normally used by the health authorities and that they suspend the payment of sickness benefits only in the cases allowed by *Article 69* of the Convention. It also asked the Government to take measures to ensure the payment of sickness benefits in the event of the employer becoming insolvent or falling behind with the payments.

In its reply, the Government refers to the new measures for the management and supervision of the cases of temporary incapacity established in Royal Decree 575/1997 of 18 April and the Ministerial Order of 19 June 1997, and indicates that the public health service is still responsible for supervising cash benefits. Consequently, it is this service and not the enterprise that issues the notifications of incapacity, confirmation or fitness which determine entitlement to cash benefits for temporary incapacity. The

enterprise may not unilaterally terminate the medical incapacity of its workers and must base itself on one of the grounds established by law for suspending or terminating the benefit. If the enterprise fails to meet its obligation to pay the benefit, it becomes liable and may be reported to the Labour Inspectorate and even sued for debt in administrative and/or judicial proceedings. If the enterprise is no longer liable because the labour relationship has ended, the managing entity will pay the benefit directly.

The UGT confirms its previous observations of 1995 and 1996, in which it indicated that the 1992 reform raised important issues concerning the State's discharge of its responsibilities: from the fourth to the fifteenth day of the incapacity, the State does not directly assume responsibility for the guarantees prescribed by the Convention. This results in conduct and practices which offend against the dignity of workers and, in some cases, the latter are denied the benefit due to pressure from the employer. According to the UGT, the employer subjects the worker to excessive supervision, allowed by section 20.4 of the Workers' Statute, which also authorizes the employer to suspend payment of the sickness benefit if the worker refuses to undergo a medical examination. The State thus in effect loses control over the guarantee required by Convention No. 102.

The Committee notes the information on the new measures related to the management and supervision of the temporary incapacity mentioned by the Government as well as the statement of the UGT that the important problems in this area remain, which seems to be supported by the detailed statistics supplied by the Government on the inspections made, infringements recorded and penalties imposed by the Labour and Social Security Inspectorate in 1996-97 in the area of social security and, more particularly, with respect to compulsory and voluntary collaboration of enterprises in the management of the benefit for temporary incapacity. Indeed, while the number of inspections carried out in 1997 (4,579) decreased in comparison with 1996 (4,877), the number of infringements recorded has substantially increased from 1,167 in 1996 to 1,526 in 1997. Measures to combat infringements included the adoption of Royal Decree 575/1997 of 18 April, and the Ministerial Order of 19 June 1997, the purpose of which is to "improve the efficiency and transparency of the management of temporary incapacity, avoiding the risk of abuse and fraud while at the same time observing the rights of those actually affected by the incapacity provided for in the law". The Committee observes that both the above texts establish more specific provisions on medical certification of incapacity or fitness for the purposes of the cash benefits for temporary incapacity and the resulting obligations of the public health services and enterprises. However, with regard to supervision and follow-up of the cash benefit and cases of temporary incapacity, under section 4 of Royal Decree 575/1997 the managing entities of the social security have the authority to carry out "activities for the purpose of ascertaining that the facts and situation which gave rise to the entitlement to the benefit still exist, *as from the date on which they take over responsibility for the cost of the cash benefit for temporary incapacity*". In legal terms this can mean that the managing entities do not normally supervise and follow up this benefit from the fourth to the fifteenth day of the incapacity when the enterprise is responsible for the cost of the benefit. This may result in the conduct and practices on the part of the employer referred to by the UGT and in the worker being denied the benefit. According to the Government, in such cases the worker may report the matter to the Labour Inspectorate or file an administrative or judicial complaint. If there is no longer an enterprise responsible for payment of the benefit

because the labour relationship has been terminated, the managing entity will pay the benefit directly.

In the Committee's view, workers should not as a rule have to take the matter to the Labour Inspectorate or the courts in order to receive sickness benefits due to them and, if employers fail to meet their obligations, it is up to the State to take the necessary steps to ensure that the benefits are paid in practice, in accordance with *Article 71, paragraph 3, and Article 72, paragraph 2*, of the Convention. The Committee notes in this connection the decision handed down on 15 June 1998 by the Supreme Court, whereby "the fact that the law requires the employer to pay the temporary incapacity benefit directly during the period in question does not mean, in the absence of an express provision, that such obligation shall have the effect of depriving the beneficiary of the system of coverage and guarantees established for social security benefits in the event of failure to pay ... The system of obligations and accompanying guarantees established in respect of this benefit in the public social security scheme in the event of the employer's failure to meet the obligation to pay it directly, must be maintained, without prejudice to the managing entity's right to reclaim the amount subsequently from the enterprise in question, in exercise of the authority conferred on it as a managing entity of the social security system". The Committee therefore asks the Government to provide information in its next report on the abovementioned "system of obligations and accompanying guarantees". It also hopes that the Government will continue to provide copies of the relevant judicial decisions together with information on the supervision carried out by the Labour and Social Security Inspectorate, including the number of inspection visits made, the infringements recorded and the sanctions applied.

3. *Part III (Sickness benefit), Article 18, and Part VI (Employment injury benefit), Article 36, paragraph 1 (in conjunction with Part XIII (Common provisions), Articles 71, paragraph 3, and 72, paragraph 2)*. With regard more particularly to the possibility for the employer to assume responsibility for direct payment of cash benefits for temporary incapacity for work resulting from common illness, in the context of the collaboration provided for in section 77(1)(d) of the LGSS, the Committee notes that such collaboration also extends to temporary incapacity resulting from employment injury as provided in section 77(1)(a). The Committee thanks the Government for having supplied the statistical information requested in its previous comments on the supervision carried out by the Labour and Social Security Inspectorate in 1996-97, with regard to compulsory and voluntary cooperation of enterprises in the management of the benefits for temporary incapacity. As the Committee observed under point 2 in its previous comments, these statistics show a substantial increase in the number of recorded infringements by enterprises. To combat this trend, the Government refers to a number of measures taken. Royal Decree 706/1997 of 16 May establishes that enterprises cooperating in social security management are subject to the financial supervision of the General Social Security Controller, without prejudice to the authority conferred on the Labour and Social Security Inspectorate. The purpose of such supervision is to ascertain, in particular, that the scope and amounts established by law for protective measures are observed. Furthermore, to ensure that the system for voluntary collaboration by enterprises in social security management operates properly, the Government adopted the Ministerial Order of 20 April 1998 to amend the Order of 25 November 1996 regulating the cooperation of enterprises in the management of the General Social Security Scheme, the object of which is to avoid practices which are

contrary to the nature of the institution, such as the practice of transferring the management of cash benefits for temporary incapacity to entities other than the authorized enterprise. Provisions have also been introduced to bring greater clarity to the obligations, to ensure that public benefits are paid in the event of lack of resources and to establish instruments for ascertaining the proper use of the resources earmarked for the collaboration in question.

The Committee notes these measures with interest. It also notes that they concern a very large number of workers in the enterprises cooperating in the management of the social security system. According to the statistics given by the Government, on 22 April 1998, the number of workers covered by the cooperation arrangement established in section 77(1)(d) of the LGSS was 1,276,292, corresponding to 16,868 contribution registers assigned to participating enterprises. In order to be able to assess the effectiveness of these measures, the Committee would like the Government to continue to supply detailed statistics on the number and the results of the checks carried out by the Labour and Social Security Inspectorate, as well as by the General Social Security Controller. It would also like the Government to provide statistics on the number of workers concerned and enterprises taking part in the other forms of voluntary collaboration provided for under section 77(1), in particular subparagraph (a). Lastly, the Committee would welcome information on any new measures taken or contemplated by the Government with a view to improving the functioning of the system of voluntary collaboration of enterprises in the payment of sickness benefit and ensuring the payment of this benefit in case of its malfunctioning.

4. *Part VI (Employment injury benefit), Article 34, paragraph 2(c) and (e).* In its previous comments the Committee requested the Government to indicate the legislative provisions or regulations under which nursing care at home, dental supplies and eyeglasses are provided free of charge to victims of employment injury, in accordance with these provisions of the Convention. In reply, the Government refers to section 11 of Decree No. 2766 of 1967, which provides that medical assistance in the event of employment injury shall be provided to workers as fully as possible and include: (a) medical and surgical care for injuries and diseases, medicaments and, in general, all the diagnostic and therapeutic techniques considered necessary by the medical profession; (b) the supply and normal resupply of prosthetic and orthopaedic appliances considered necessary, as well as vehicles for disabled persons; and (c) plastic surgery under certain conditions. With regard in particular to nursing care at home, the Government adds that Royal Decree No. 63 of 1995 includes in Annex I, among the benefits provided directly by the national health system and financed by social security or public funds, medical assistance at the home of the patient. Similarly, care at home is provided for immobilized patients and patients in the terminal phase, as well as primary emergency care at the home of the patient. In this respect, the Committee notes that point 2(4) of Annex I of Royal Decree No. 63 of 1995 states that primary emergency assistance is provided continuously at all hours of the day and night and includes outpatient medical and nursing care, as well as care at the home of the patient in cases in which it is required. The Committee asks the Government to confirm in its next report that the victims of employment injury are entitled free of charge to the nursing care at home which is necessary during the entire period that they are immobilized.

Furthermore, the Committee also notes a number of provisions to which the Government refers in its report, and particularly section 108 of Royal Decree

No. 2065/1974, Annex I of Royal Decree No. 65/1995 and the Ministerial Order of 18 January 1996, which refer to the possibility of providing financial assistance for "dental and special prosthetic appliances", covering the difference between the cost of the corresponding articles and the share of the user, according to the prescribed rates. However, it notes the statement by the Government that dental prosthetic appliances, with certain exceptions for the palate, as well as eyeglasses, which are covered by *Article 34, paragraph 2(e)* of the Convention, are not included in the list of benefits provided by the health system. It notes in this respect that Annex V of the Ministerial Order of 18 January 1996, which defines dental and special prosthetic appliances, only makes reference in this respect to prostheses of the palate. In these conditions, the Committee would be grateful if the Government would indicate in its next report the measures which have been taken or are envisaged to give full effect to this provision of the Convention in national law and practice with regard to the provision free of charge of dental supplies and eyeglasses to the victims of employment injuries.

5. The Committee notes the communication dated 29 February 2000 sent by the Moroccan Democratic Confederation of Labour on the application by Spain of certain Conventions, including Convention No. 102, and the comments which the Government saw fit to make on these issues.

Venezuela (ratification: 1982)

The Committee notes the information supplied by the Government in its reports on Conventions 102, 121, 128 and 130. It understands, moreover, that the reforms to the health and pensions systems which were envisaged have not been implemented, as the new Government has decided to conduct a global re-examination of the matter. The Committee therefore hopes that the Government's next report will contain full information on all measures taken or envisaged subsequent to this examination and that, in this context, due account will be taken of the obligations arising from ratification of the Convention, and particularly the following provisions which have been the subject of its comments for many years: *Articles 9 and 48 of the Convention* (scope of the insurance in regard to medical care and maternity benefit); *Article 10, paragraph 1(a)* (specification in legislation of the types of medical care that shall be provided for the persons protected); *Article 50 (in conjunction with Article 65)*; and *Article 52* (duration of maternity benefit).

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In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, Mauritania, Mexico, Peru, Spain*.

Convention No. 103: Maternity Protection (Revised), 1952

Requests regarding certain points are being addressed directly to the following States: *Guatemala, Mongolia, Tajikistan, Uruguay*.

Convention No. 105: Abolition of Forced Labour, 1957

Afghanistan (ratification: 1963)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(a) of the Convention. In comments made for a number of years, the Committee has noted that prison sentences involving an obligation to perform labour may be imposed under the following provisions of the Penal Code:

- (a) sections 184(3), 197(1)(a) and 240 concerning, inter alia, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods;
- (b) sections 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization under the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or makes propaganda for its extension or attraction to it, by whatever means it may be, or who joins such an organization or establishes relations, himself or through someone else with such an organization or one of its branches.

The Committee had noted the Government's earlier indication that the obligation to perform prison labour provided for under section 3 of the Prisons Law covers persons convicted under the above-mentioned sections of the Penal Code as well as those convicted of other misdemeanours and crimes; under section 13 of the Prisons Law, those convicted under the above-mentioned sections of the Penal Code are kept in custody separately from ordinary prisoners, and are also engaged in different activities to keep themselves physically healthy and to provide themselves with gainful employment for which they are fully paid.

While noting the special status given to prisoners convicted under the above-mentioned sections of the Penal Code, the Committee pointed out that the imposition of sanctions involving compulsory labour on these persons remains contrary to the Convention.

The Committee hopes that the penal provisions will be examined in the light of the Convention with a view to ensuring that no sanctions involving forced or compulsory labour may be imposed as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system and that the Government will indicate the measures taken to this end.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Algeria (ratification: 1969)

Article 1(a) of the Convention. In the comments that it has been making for many years, the Committee has referred to the provisions respecting the right of association which permit the imposition of sentences of imprisonment involving the obligation to work in circumstances which are covered by the scope of the Convention.

The Committee referred to sections 5 and 45 of Act No. 90-31 respecting associations. Under the terms of section 5, an association's legal status is invalidated if its objectives are contrary to the established institutional system, to public order, good

morals or the laws and regulations in force. Section 45 provides that any individual who directs, administers or agitates in an association that has not been recognized, or which has been suspended or dissolved, or who facilitates meetings of the members of such an association, shall be liable to a term of imprisonment ranging from three months to two years, including the obligation to work, under the terms of sections 2 and 3 of the Interministerial Order of 26 June 1983.

The Committee has recalled on several occasions that the Convention prohibits the use of any form of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing certain political views or expressing opposition to the established political, social or economic system.

It notes the Government's statement that the legislation in force does not distinguish between a political and a civil crime and that the work performed by convicted prisoners under the terms of the Act respecting associations is considered to be corrective action. In its last report, the Government reaffirms that prison work is an activity which forms part of the rehabilitation, training and social promotion of detainees.

The Committee observes that the fact of imposing prison labour on persons convicted under Act No. 90-31 with a view to their "rehabilitation" is contrary to the Convention, as it is imposed on persons convicted of having expressed certain political views or manifested their ideological opposition to the established political, social or economic system.

The Committee hopes that the Government will take the necessary measures to ensure compliance with the Convention, either by amending sections 5 and 45 of Act No. 90-31, or by dispensing from prison labour persons who have been convicted for expressing certain political opinions.

Belize (ratification: 1983)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(c) and (d) of the Convention. In comments made for a number of years, the Committee has referred to section 35(2) of the Trade Unions Act (Ch. 238), under which a penalty of imprisonment (involving, by virtue of section 66 of the Prison Rules, an obligation to work) may be imposed on any person employed by the Government, municipal authority or any employer in charge of supplying electricity, water, railway, health, sanitary or medical services or communications or any other service that may by proclamation be declared by the Governor to be a public service, if such person wilfully and maliciously breaks a contract of service, knowing or having reasonable cause to believe that the probable consequences will be to cause injury or danger or grave inconvenience to the community. The Committee has also noted that, in pursuance of section 2 of the Settlement of Disputes Essential Services Act (Ch. 235), Statutory Instrument No. 92 of 1981 declared the National Fire Service, Postal Service, Monetary and Financial Services (banks, treasury, monetary authority), Airports (civil aviation and airport security services) and the Port Authority (pilots and security services) to be essential services; Statutory Instrument No. 51 of 1988 declared the Social Security Scheme administered by the Social Security Branch an essential service; and Statutory Instrument No. 32 of 1984 declared Revenue Services, including all Revenue Collecting Departments and Agencies of the Government to be essential services.

The Committee noted from the Government's 1994 report that there have been no steps to bring section 35(2) of the Trade Unions Act into conformity with the requirements of the Convention. It recalls that under the Convention, legislation providing for sanctions involving compulsory labour as a punishment for violations of labour discipline or for having participated in strikes must be repealed. It refers also to the explanations in paragraphs 110, 114 to 116 and 123 of its General Survey of 1979 on the abolition of forced labour. Whilst it notes that there are no recorded penalties of imprisonment imposed under section 35(2), the Committee again expresses the hope that the necessary measures will be taken to bring section 35(2), as well as actual practice, into conformity with the Convention and that meanwhile the Government will provide information on its application in practice, including any cases in which penalties of imprisonment have been imposed under it.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Benin (ratification: 1961)

Article 1(a) of the Convention. In its previous comments, the Committee noted that Act No. 60-12 of 30 June 1962 on the freedom of the press contains provisions envisaging sentences of imprisonment involving compulsory labour for certain acts or activities related to the exercise of the right of expression. The Committee referred in this respect to the following provisions: section 8 (deposit of a publication with the authorities before its circulation to the public); section 12 (permitting a ban on publications of foreign origin in French or in the vernacular printed within or outside the national territory); section 20 (incitement to commit an act classified as an offence); section 23 (causing offence to the Prime Minister); section 25 (publishing false reports); and sections 26 and 27 (slander and insults).

The Committee had expressed the hope that the new Act on freedom of information, to which the Government had referred in its report, would be adopted rapidly and would guarantee that no term of imprisonment involving compulsory labour could be imposed as a penalty for activities related to the exercise of the right of expression.

The Committee notes the adoption of Act No. 97-010 of 20 August 1997, liberalizing audiovisual communications and the special penal provisions relating to offences in the field of the press and audiovisual communication, provided by the Government.

The Committee notes the Government's statement that the new Act does not repeal Act No. 60-12, but that in the event of conflicting provisions, those of Act No. 97-010 prevail.

The Committee notes that the provisions of the new Act do not eliminate the divergencies between the national legislation and the Convention, since the scope of the new Act covers audiovisual communications, but not "printing, book sales and periodicals", which constituted the scope of Act No. 60-12 of 30 June 1960. Furthermore, the Committee regrets that certain of the provisions of the new Act are similar to provisions in Act No. 60-12. The Committee notes that, under section 79 of Act No. 97-010, "any seditious cries or chants against the legally established authorities in public places or meetings" shall be punishable by a sentence of imprisonment of from six months to two years, and that insulting the person of the President of the Republic shall be punished by imprisonment of from one to five years, under section 81; moreover, under section 80, provocation of the public security forces aimed at

distracting them from their duty of defending security and obeying the orders given by their chiefs for the enforcement of military laws and regulations, shall be punishable with two to five years' imprisonment. Under the terms of the new section 67 of Decree No. 73-293 of 15 September 1973, issuing the prison regulations, convicted prisoners may be assigned to social rehabilitation work.

The Committee requests the Government to take the necessary measures to ensure compliance with the Convention and to provide information on the application in practice of the above provisions of Acts Nos. 60-12 and 97-010, including copies of any court decisions which clarify the scope of the above provisions.

Bolivia (ratification: 1990)

Article 1(d) of the Convention. In previous comments the Committee referred to section 234 of the Penal Code under which advocacy of lockouts, strikes or stoppages declared illegal by the labour authorities is punishable by imprisonment for a term of between one and five years. The Committee requested the Government to supply information on the effect given in practice to these provisions in order to enable it to evaluate their scope, and to provide copies of court decisions made under them, and the number of convictions made.

With reference to this matter, the Committee notes the conclusions of the Committee on Freedom of Association on the complaint made by the World Confederation of Labour (WCL), Case No. 2007 (GB.277/9-1 of March 2000).

According to the complainant organization, the Ministry of Labour declared the strike illegal in resolution No. 178/97 of 14 April 1997. "The company initiated legal proceedings against union officials and members for participation in an illegal strike, sabotage and incitement in Criminal Investigations Tribunal No. 8. The judge issued arrest warrants against the workers (these have still not been carried out), basing the decision on section 234 of the Penal Code. ... The WCL alleges that this case sets an extremely serious precedent in criminalizing a strike ..." (GB.277/9-1, paragraph 263).

In its conclusions the Committee on Freedom of Association states that "the Committee of Experts in its comments on the application of Convention No. 87 by Bolivia in 1999 and previous years criticized certain restrictions in respect of the right to strike, such as the requirement for a majority of three-quarters of the workers of the enterprise to call a strike (section 114 of the Act and section 159 of the Regulation), the unlawful nature of general and sympathy strikes which are liable to penal sanctions (Legislative Decree No. 02565 of 1951) and the recourse to compulsory arbitration by decision of the Executive Power to put an end to the strike (section 113 of the General Labour Act). In these circumstances the Committee urges the Government to adopt measures as a matter of urgency with a view to amending legislation concerning strikes in respect of all the points raised by the Committee of Experts and with regard to the need to ensure that strikes may be declared illegal only by an independent body, given that excessive requirements and restrictions in many cases make legal strike action impossible in practice" (paragraph 282). In its recommendations, the Committee "emphasizes that no worker on strike who has acted peacefully should be subject to criminal sanctions, and asks the Government to reform the Penal Code with this principle in mind and to inform it of any rulings that are handed down in this regard" (paragraph 285(c)).

The Committee refers to the explanations contained in paragraphs 126 et seq. of its 1979 General Survey on the abolition of forced labour which indicate that excessive restrictions imposed on exercise of the right to strike have an impact on application of the Convention. This is the case of the requirement for a qualified majority to call a strike and the existence of compulsory arbitration systems when such restrictions result in a declaration that the strike is illegal with the consequent penal sanctions and the imposition of compulsory prison labour.

The Committee notes that the Government is disposed to amend the provisions of the Penal Code which make illegal strikes punishable by imprisonment (GB.277/9/1, paragraph 280).

The Committee hopes that the Government will take the necessary measures to ensure that penalties involving compulsory labour will not be imposed for participation in strikes and will provide information on progress made to that end.

Central African Republic (ratification: 1964)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(a) of the Convention. In its previous comments, the Committee drew the Government's attention to the provisions of Act No. 60/169 (dissemination of prohibited publications) and of Order No. 3-MI of 25 April 1969 (dissemination of periodicals or news that has not been approved by the censorship authority) which provides for terms of imprisonment – including compulsory work – for the expression of political opinions. It noted with interest the entry into force in 1995 of the new Constitution which guarantees freedom of the press (article 13) and asked the Government to indicate whether Act No. 60/169 and Order No. 3-MI had been repealed or amended.

The Committee has noted that the last report of the Government, which was received in 1997, contained no reply on this point. However, it has noted the information according to which persons who express political opinions or their ideological opposition to the established political, social or economic order cannot be compelled to do forced or compulsory labour under the terms of the new Constitution of 14 January 1995.

The Committee hopes that the Government in its next report will state whether Act No. 60/169 and Order No. 3-MI have been amended or repealed and that it will communicate, as appropriate, a copy of any new provisions that have been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Colombia (ratification: 1963)

In its previous comments, the Committee referred to the impact that various provisions of the Penal Code may have on the application of the Convention, namely sections 187, 290, 291, 276, 370, 313 and 164 respecting the expression of certain political views or views ideologically opposed to the established political, social or economic system. The above provisions envisaged penalties of imprisonment involving compulsory labour under section 79 of the Prisons Code, by virtue of which work in detention establishments is compulsory for all detainees. The Committee had also indicated to the Government that the Prisons Code does not envisage exemption from the

obligation to work for persons who may be convicted of offences related to the expression of political views or participation in strikes.

In this regard, the Committee noted the comments made by the Worker members of the Conference Committee on the Application of Standards, in the context of discussions on the application of Convention No. 87, relating to the application of penal law to social protest and trade union activities, including strikes.

The Committee had requested the Government to provide information on the application in practice of the provisions under criticism, namely sections 187, 290, 291, 276, 370, 313 and 164 of the Penal Code, and particularly on the number of convictions and copies of the respective court decisions.

The Committee notes that in its report the Government has confined itself to repeating that there are no penalties for exercising the right to strike, and that the Committee's information is biased, tendentious and intended to create a bad image of the rule of law in the country.

With regard to the matters raised, the Committee notes that in the 322nd Report of the Committee on Freedom of Association of June 2000 (GB.278.3.2), the Committee on Freedom of Association noted the allegations made by the Petroleum Industry Workers' Trade Union (USO) in Case No. 1787 concerning the penal investigation initiated against 11 of its officials. The Committee of Experts also notes the information contained in the Final Report on the National Day of Civic Protest (31 August-1 September 1999) of the social and trade union network for the support and protection of human rights, which was supplied by the Single Workers' Confederation (CUT) to the direct contacts mission which visited Colombia from 7 to 16 February 2000 and transmitted to the Committee on Freedom of Association in the context of the allegations made before the Committee on Freedom of Association (Case No. 1787). The above report refers to the need to "ensure the persistent follow-up of all those charged throughout the country (310 cases) during the day of protest with a view to achieving the complete cessation of trials in order to depenalize social protest". According to the same report, the adoption of a new Penal Code "opens once again the debate on the definition of political offences, with the determination of the penal measures imposed as penalties for social protest".

The Committee also notes that, according to the Lawyers' Association representing the workers, "acts of social protest are penalized and impeded, using apparently legal means". These include recourse to "faceless justice" (information gathered by the direct contacts mission referred to above: GB.278.3.2).

The Committee notes the adoption of the new Penal Code, Act No. 599 of 24 July 2000, and the changes in relation to the provisions which were the subject of its previous comments. The Committee notes that section 290 (violation of the freedom to work), violations of which were punished by sentences of detention of between six months and three years, has been replaced by section 198 which only envisages a fine. The Committee also notes the provisions of sections 182 (illegal constraint), 199 (sabotage) and 265 (damage to the property of others) of the new Penal Code, which take up the provisions contained in the former Code and which were the subject of the Committee's comments, as well as sections 353 (disturbing collective transport services) and 357 (damage to communications infrastructure or equipment), with penalties of

imprisonment of between one and three years and two and five years respectively envisaged for persons found to have committed the above offences.

The Committee requests the Government, with a view to enabling it to examine the application of the Convention, to indicate the scope of the provisions set out in sections 199, 265, 220, 353 and 357 of the Penal Code, and to provide information on the application in practice of the above provisions, including the number of convictions and copies of the respective court decisions.

The Committee hopes that the Government will provide information on the measures which have been taken or are envisaged to ensure that the application in practice of the above provisions of the Penal Code does not permit the imposition of forced labour for the expression of political views or participation in strikes.

Cyprus (ratification: 1960)

The Committee notes the information provided by the Government in reply to its earlier comments.

Article 1(c) and (d) of the Convention. In the comments that it has been making for many years, the Committee has noted that section 3(1) of the Supplies and Services (Transitional Powers) (Continuation) Act (Chapter 175A) authorizes the issuance of Orders to make effective Defence Regulations 79A and 79B for the purpose of so maintaining, controlling and regulating supplies and services such as: (i) to secure their equitable distribution or their availability at fair prices; (ii) to promote the productivity of industry, commerce and agriculture; (iii) to foster and direct exports and reduce imports and to redress the balance of trade; and (iv) to ensure that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. Regulation 79A authorizes the direction of any person to perform services, and the requirement that persons employed in undertakings engaged in work regarded as essential for any prescribed purpose, not terminate their employment or absent themselves from work or be persistently late for work, on pain of imprisonment (involving, under the Prison Regulations, the obligation to perform labour). Regulation 79B authorizes the Government to issue further regulations to prohibit strikes, on pain of imprisonment, by virtue of Regulation 94.

The Committee previously noted that the Government had proceeded with the drafting of new legislation regulating the right to strike in essential services. The Government indicates in its latest report that the Ministerial Committee effected several amendments to the draft legislation which were presented to the trade unions for consultation, and that the trade unions gave in writing their views on the issue of the regulation of the right to strike in essential services. The Committee notes that the consultations with the trade unions on this matter will continue. It also notes with interest the Government's statement in the report that, in the course of preparation of the amendments, the Committee of Experts' views concerning the definition of essential services and the need to abolish compulsory labour as a punishment for having participated in strikes have been duly taken into account.

In its latest report, the Government confirms its previous repeated statement that, during the period under review, no recourse was had to Defence Regulations 79A and 79B, which can only be applied to the extent that they are not in conflict with the

Constitution of the Republic of Cyprus and, namely, articles 10 and 27 concerning forced labour and the right to strike, respectively. While noting this statement and referring also to its observation addressed to the Government under Convention No. 87, the Committee reiterates its hope that the list of prescribed essential services will be limited to essential services in the strict sense of the term, and that participation in strikes will not be punishable with penalties involving compulsory labour, unless such strikes are likely to endanger the life, personal safety or health of the whole or part of the population. Furthermore, the workers concerned must remain free to terminate their employment by reasonable notice. The Committee requests the Government to provide, in its next report, information on any progress made in this regard and to supply a copy of the new provisions as soon as they are adopted.

El Salvador (ratification: 1969)

The Committee notes with satisfaction that the new Penal Code, Legislative Decree No. 1030 of 26 April 1997, has repealed the provisions of the Penal Code which permitted the imposition of sentences involving compulsory labour for activities related to the expression of political opinions or opposition to the established political order, namely sections 291, 376, 377, 387 and 407 respecting the obstruction or abandoning of public services, the dissemination of anarchist doctrines or those which are contrary to democracy, subversive propaganda and the right of association.

Guinea (ratification: 1961)

In previous comments, the Committee noted that detention or imprisonment could be imposed for infringements of certain provisions of the Penal Code (sections 71(4), 110, 111, 176 and 177) respecting the exercise of the right of expression. Penalties of detention or imprisonment applicable in the event of infringements of such provisions involve the obligation to work, under the terms of sections 14 and 28 of the Penal Code.

The Committee notes the Government's statement that a new Penal Code has been adopted. The Committee hopes that the new text will bring the national legislation into conformity with the Convention and that the Government will provide a copy of it with its next report. The Committee also requests the Government to provide copies of any legislation respecting prison work.

Morocco (ratification: 1966)

Article 1(d) of the Convention. For several years the Committee has been referring in its observations to section 288 of the Penal Code (violation of the freedom of work) which provides for prison sentences of from one month to two years, involving compulsory labour, for acts of violence, the use of force, threats or fraudulent activities during certain types of work stoppage.

The Committee had previously noted the request submitted by the Moroccan Labour Union (UMT) to the Government to repeal this provision which, according to the UMT, is frequently used by the courts to imprison UMT militants because of their peaceful participation in strikes. The Committee also noted that the Committee on Freedom of Association had concluded, when examining a complaint from the UMT, that "the authorities should not resort to arrests and imprisonment in connection with the

organization of or participation in a peaceful strike: such measures entail serious risks of abuse and are a grave threat to freedom of association" (GB.267/7, paragraph 409, 267th Session).

The Committee asked the Government to supply copies of any rulings handed down in this connection. It notes that a certain number of judgements were attached to the Government's report and that in its report the Government indicates, once again, that the acts sanctioned under section 288 are acts of violence, the use of force, threats or fraudulent activities, as well as violations of the freedom of work.

The Committee notes that, in one of the rulings handed down under section 288, the element constituting violation of the freedom of work was the fact of having placed stones on the access road to the workplace, without any mention of violence or of any consequences giving rise to injury. The Committee also observes that in four out of the nine judgements communicated by the Government, the Court acquitted the accused of the charges made against them, which may suggest a certain abuse of this procedure. This impression is reinforced by the Government's indication in its report that "an abundance of rulings are handed down under this section". The Committee notes the complaint against the Government of Morocco to the Committee on Freedom of Association presented by the Moroccan Labour Union (UMT) on 4 September 1999, alleging the arrest of trade union officers and members following strikes. According to the UMT, the workers of the AVITEMA factory were participating in a peaceful, legal strike within the factory when the forces of order intervened violently on 2 September 1999, arresting 21 militant trade union members who were brought before the Court of First Instance of Rabat and charged under the "sinister section 288 of the Penal Code which represses trade union members exercising their right to strike".

The Committee notes that the Committee on Freedom of Association, in its conclusions on this complaint (Case No. 2048), reminds the Government that "no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike" (GB 279/8, 279th Session, November 2000). This complaint was also presented by the Arab Maghreb Worker's Union (USTMA) and the International Confederation of Free Trade Unions (ICFTU).

The Committee requests the Government to examine section 288 of the Penal Code in the light of the Convention and the restrictions that application of this penal provision causes to the free exercise of freedom of association and the right to strike, which are in fact guaranteed in the national Constitution. The Committee hopes that the Government will take the necessary measures to ensure that sanctions, including compulsory labour, cannot be imposed for participating in strikes.

The Committee asked the Government to supply information on the effect given in practice to section 5 of Decree No. 2-57-1465 of 8 February 1958 respecting the exercise of the right to organize by public servants. The Committee noted, from the observations formulated by the Democratic Confederation of Labour (CDT) and the General Union of Moroccan Workers (UGTM) that the Government had recourse to this Decree to threaten public servants and oblige them to work during strikes and that in certain cases it had arrested teachers and health care personnel.

The Committee notes the Government's statement that the only risk run by public employees, who contravene the rules of conduct stipulated under section 5, is the

suspension of the right to defend themselves before the Disciplinary Council, and in no case is there a risk of forced labour.

Article 1(a). The Committee notes the Concluding Observations of the Human Rights Committee (CCPR/C/79/Add.113 of 1 November 1999) after consideration of the fourth periodic report of Morocco, in which the Committee "continues to be concerned that the Moroccan Press Code includes provisions which severely restrict freedom of expression by authorizing seizure of publications and by imposing penalties for broadly defined offences (such as publishing inaccurate information or undermining the political or religious establishment). It is deeply concerned that 44 persons have been imprisoned for offences under these laws. In addition, the Committee is particularly concerned that persons expressing political views opposing the Government or calling for a republican form of government have been sentenced to imprisonment under section 179 of the Penal Code for the offence of insulting members of the royal family" (paragraph 23). "The Committee is concerned at the breadth of the requirement of notification for assemblies and that the requirement of a receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly" (paragraph 24).

The Committee recalls that the Convention prohibits the use of any form of forced or compulsory labour, including compulsory prison labour, as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee also recalls that the protection provided by the Convention is not restricted to activities expressing or displaying opinions different from established principles. Consequently, if certain activities are directed towards the introduction of fundamental changes to the institutions of the State, this does not constitute a reason for considering them to fall outside the protection provided by the Convention, as long as the use of, or incitation to, violence is not made in arriving at the desired result.

The Committee also observes the importance, for the effective respect of the Convention, of legal guarantees regarding the rights of assembly, of expression, to demonstration and association, and the direct incidence that restriction of these rights may have on the effect given to the Convention. It is in fact often in the exercise of these rights that political opposition to the established order may show itself.

The Committee requests the Government to supply the text of Dahir No. 1-58-378 of 15 November 1958 enacting the Press Code and the texts regarding the rights of assembly and of association.

Nigeria (ratification: 1960)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

The Committee hopes the Government will supply a report for examination at its next session, and that it will indicate in detail the position in relation especially to *Article 1(a), (c), (d) and (e) of the Convention*, bearing in mind among other things the questions raised in the previous comments concerning these matters:

1. The Government is requested to indicate whether the State Security (Detention of Persons) Decree, No. 2 of 1984, as amended, continues in force and whether forced or compulsory labour may be imposed under it in circumstances incompatible with the Convention.

2. The Government is requested to indicate steps taken to ensure observance of the Convention in respect of: (i) section 81(1)(b) and (c) of the Labour Decree, 1974, as regards direction to fulfil contracts of employment on pain of imprisonment involving an obligation to work; (ii) section 117(b), (c) and (e) of the Merchant Shipping Act, as regards possible imprisonment with the obligation to work for seafarers in breach of discipline; and (iii) section 13(1) and (2) of the Trade Disputes Decree, No. 7 of 1976, as regards similar imprisonment for participation in strikes.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Pakistan (ratification: 1960)

The Committee takes note of the information provided by the Government in reply to its earlier comments, as well as of the discussion that took place in the Conference Committee in June 2000.

Article 1(c) and (d), of the Convention. 1. In its earlier comments made under the present Convention and the Forced Labour Convention, 1930 (No. 29), the Committee noted that the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, prohibit employees from leaving their employment, even by giving notice, without the consent of the employer, as well as from striking, subject to penalties of imprisonment that may involve compulsory labour.

2. In comments made under the Convention in July 1999, the All Pakistan Federation of Trade Unions (APFTU) stated that the provisions of the Essential Services Act apply *inter alia* to workers employed in various public utilities such as WAPDA, Railway, Telecommunication, Karachi Port Trust, Sui Gas, etc., and these workers cannot resign from their service and cannot go on strike. The Committee also noted from a report by the ILO South Asia Multidisciplinary Advisory Team that the Ghazi Barotha Hydro Power Project (in which the World Bank was providing assistance for the construction of a power complex on the Indus river) had been declared by the Government an essential service, so that the abovementioned restrictions applied to workers on the project.

3. The Government reiterates in its report its previous statement that the application of the 1952 Act has been made very restrictive and it is extended only in cases of extreme nature, when peaceful and uninterrupted supply of goods and services to the general public appears to be disturbed. During the discussion in the Conference Committee in 2000, the Government representative repeated indications previously given to this Committee to the effect that the Act applied to only six categories of establishments (a reduction from an initial list of ten categories) which were considered truly essential to the life of the community. As regards the Ghazi Barotha Hydro Power Project, which had been placed under the Act, the Government representative assured the Conference Committee that the application of the Act to this project was a temporary measure. The Government representative also informed the Conference Committee that the observations of the Committee of Experts concerning the Act had been placed before the Tripartite Commission on the Consolidation, Simplification and Rationalization of Labour Laws, and that the Commission's recommendations would be provided to the ILO and to the social partners when finalized.

4. While noting these indications, the Committee recalls that the abovementioned restrictions under the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, apply permanently to all employment under the federal and provincial governments, and local authorities, and any service related to transport or civil defence, and may in addition, be applied by notification, to employment in any autonomous educational body, as well as other employment that the Government considers essential. Referring to the explanations provided in paragraphs 110 and 123 of its 1979 General Survey on the abolition of forced labour, the Committee once again points out that the Convention does not protect persons responsible for breaches of labour discipline or strikes that impair the operation of essential services in the strict sense or in other circumstances where life and health are in danger; however, in such cases there must exist an effective danger, not mere inconvenience. Furthermore, all the workers concerned – whether in any employment under the federal and provincial governments and local authorities or in public utilities, including essential services – must remain free to terminate their employment by reasonable notice; otherwise a contractual relationship based on the will of the parties may be changed into service by compulsion of law, which is incompatible with both the present Convention and the Forced Labour Convention, 1930 (No. 29), likewise ratified by Pakistan. The Committee therefore expresses the firm hope that the Pakistan Essential Services Act and corresponding provincial Acts will be either repealed or amended in the near future so as to ensure the observance of the Convention, and that the Government will report on the action taken to this effect.

5. The Committee previously referred to sections 100 to 103 of the Merchant Shipping Act, under which penalties involving compulsory labour may be imposed in relation to various breaches of labour discipline by seafarers, and seafarers may be forcibly returned on board ship to perform their duties. It noted the Government's indications in its previous report that the abovementioned sections of the Act had been reintroduced in the Merchant Shipping Bill, with some modifications. The Government indicates in its latest report that the Bill has been converted into Ordinance 2000, which is in the process of enactment. In the Government's opinion, the new Ordinance fulfils the requirements of the Convention. The Committee expresses the firm hope that the necessary amendments will be adopted, in the near future, so as to remove the penalties involving compulsory labour from sections 100 and 100(ii), (iii) and (v) of the Merchant Shipping Act (or limit their scope to offences committed in circumstances endangering the safety of the ship or the life, personal safety or health of persons) and to repeal the provisions of sections 101 and 102 of the Act under which seafarers may be forcibly returned on board ship to perform their duties. The Committee asks the Government to provide information on the progress made in this regard.

6. In comments made for many years, the Committee has referred to sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969) under which whoever commits any breach of any term of any settlement, award or decision or fails to implement any such term may be punished with imprisonment which may involve compulsory labour. The Committee expressed the hope that the Government would take the necessary measures to bring the Industrial Relations Ordinance into conformity with the Convention, by repealing sections 54 and 55 of the Ordinance or by repealing the penalties which may involve compulsory labour, or by limiting their scope to circumstances endangering the life, personal safety or health of the population.

7. The Government previously indicated that a Bill to amend the Industrial Relations Ordinance had been presented to the National Assembly and that it was proposed to remove from the provisions of sections 54 and 55 the element of compulsory labour by replacing imprisonment with what was called "simple imprisonment" which does not involve compulsory labour. In its latest report, the Government confirms the statement made by the Government representative during the discussion in the Conference Committee in June 2000 that sections 54 and 55 were placed before the Tripartite Commission on Consolidation, Simplification and Rationalization of Labour Laws, which was due to finalize its recommendations by August 2000. The Committee reiterates its hope that measures will soon be taken to bring the Industrial Relations Ordinance into conformity with the Convention, and that the Government will supply full information on the provisions adopted to this end.

Article 1(a) and (e). 8. In comments made for a number of years, the Committee has referred to certain provisions in the Security of Pakistan Act, 1952 (sections 10 to 13), the West Pakistan Press and Publications Ordinance, 1963 (sections 12, 36, 56, 59 and 23, 24, 27, 28 and 30), and the Political Parties Act, 1962 (sections 2 and 7), which give the authorities wide discretionary powers to prohibit the publication of views and to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour.

9. The Committee notes that during the discussion of these matters in the Conference Committee in June 2000 the Government representative repeated the Government's statement previously made in its report that any punishment under the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, would be imposed after a fair trial in a court of law, in which the accused would be given every opportunity to defend and prove their innocence. In this connection, the Committee refers again to the explanations provided in paragraphs 102 to 109 of its 1979 General Survey on the abolition of forced labour, where it indicated that compulsory labour in any form, including compulsory prison labour, falls within the scope of the Convention in so far as it is exacted in one of the five cases specified in *Article 1* of the Convention. It is both a requirement of due process of law and the substance of penal provisions aimed at the punishment of political dissent with sanctions involving compulsory labour which are covered by *Article 1(a)* of the Convention.

10. The Government representative also indicated that both Acts referred to above had been brought to the attention of the competent authorities. According to the Government's latest report, the requisite information will be submitted by the end of 2000. The Committee reiterates its hope that the necessary measures will soon be taken in order to bring the abovementioned provisions of these Acts into conformity with the Convention and that the Government will report on progress achieved. Pending action to amend these provisions, the Government is again requested to supply information on their practical application, including the number of convictions and copies of any court decisions defining or illustrating the scope of the legislation.

11. As regards the West Pakistan Press and Publications Ordinance, 1963, the Committee notes with interest the Government's indications in its latest report, as well as the information provided by the Government representative to the Conference Committee in June 2000, according to which it was repealed in 1988, and as a result of a dialogue initiated by the Government with the All Pakistan Newspapers Society (APNS)

and the Council of Pakistan Newspapers Editors (CPNE), the Registration of Printing Press and Publication Ordinance, 1988, was enacted. The Government indicates that the 1988 Ordinance, which was repromulgated every 120 days as required under the law, was allowed to lapse in July 1997, as well as the Registration of Printing Press and Publications Ordinance, 1996, to which the Government referred in its report received in December 1996, so that at present there is no such law in force. The Government states that it endeavours to enact a new press law after a consensus has been reached on the matter with the newspaper industry, and that the process of consultations with the APNS and the CPNE is still going on. The Committee would be grateful if the Government would keep the ILO informed of the developments regarding the adoption of a new press law and requests the Government to supply a copy thereof, as soon as it is adopted.

12. In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punished with imprisonment for a term which may extend to three years.

13. The Committee has noted the Government's repeated statement in its reports that religious discrimination does not exist and is forbidden under the Constitution, which guarantees equal citizenship and fundamental rights to minorities living in the country. The Government states that subject to law, public order and morality, the minorities have the right to profess, propagate their religion and establish, maintain and manage their religious institution. The Government previously expressed the view that religious freedom exists as long as the feelings of another religious community are not injured, and anyone, regardless of religious conviction, will be punished for professing religion in a way that injures the feelings of another community. According to the Government, the provisions of the Penal Code referred to above were drafted with a view to ensuring peace and tranquillity, and in order to save the country from grave communal riots.

14. In its earlier comments, the Committee took note of the report presented to the United Nations Commission on Human Rights in 1991 by the Special Rapporteur on the Application of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Conviction (document E/CN.4/1990/46 of 12 January 1990), referring to allegations according to which proceedings were instituted, on the basis of sections 298B and C of the Penal Code, in the districts of Guranwala, Shekhupura, Tharparkar and Attock against a number of persons having used specific greetings. The Committee also noted from the report by the Special Rapporteur presented to the Commission on Human Rights in 1992 (document E/CN.4/1992/52 of 18 December 1991) that nine persons were sentenced to two years' imprisonment for acting against Ordinance XX of 1984 in April 1990, and that another person was sentenced to one year of imprisonment in 1988 for wearing a badge, the sentence being upheld by the court of appeal. It was stated that the Ahmadi daily newspaper had been banned during the past four years, its editor, publisher and printer indicted, and Ahmadi books and publications banned and confiscated. There was also reference to the sentencing under sections 298B and 298C of the Penal Code of two Ahmadis to several years' imprisonment and a fine of 30,000 rupees (in the case of failure to pay the fine, imprisonment would be extended by 18 months).

15. The Government repeatedly indicated in its earlier reports that the report of the Special Rapporteur was not based on facts. The Committee therefore requested the Government to provide factual information on the practical application of the provisions of sections 298B and 298C of the Penal Code, including the number of persons convicted and copies of court decisions, in particular in the proceedings mentioned by the Special Rapporteur, as well as of any court ruling that sections 298B and 298C are incompatible with constitutional requirements. The Committee observes that the information requested on court practice to contradict the findings of the Special Rapporteur has not been supplied.

16. Referring to the explanations provided in paragraphs 133 and 141 of its 1979 General Survey on the abolition of forced labour, the Committee recalls once again that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. However, where punishment involving compulsory labour is aimed at the peaceful expression of religious views, or where such punishment (for whatever offence) is meted out more severely, or even exclusively, to certain groups defined in social or religious terms, this falls within the scope of the Convention. The Committee therefore expresses the firm hope that the necessary measures will be taken in relation to sections 298B and 298C of the Penal Code to ensure the observance of the Convention.

Sierra Leone (ratification: 1961)

The Committee notes with regret that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

In its earlier comments the Committee requested the Government to supply indications on the evolution of the political situation, in so far as it relates to the application of the Convention. It noted that the Constitution adopted in 1991 (Act No. 6 of 1991) which provided for the recognition and protection of fundamental human rights and freedoms, had been suspended. The Government informed the Committee in its latest report (1995) that public meetings of a political nature remained banned and that new guidelines for publications had been introduced.

The Committee noted that in July 1996 the Constitutional Reinstatement Provisions Act reinstated the suspended parts of the 1991 Constitution. It further noted the change of government in May 1997 and hoped that the Government would supply information on the developments of the political situation in the country, in so far as the application of the Convention is concerned, and in particular, information on the application of provisions concerning the freedom of speech and press, freedom of peaceful assembly and association. The Committee also asked the Government to provide, in its next report, the information requested in its previous observation on the application in practice of sections 24, 32 and 33 of the Public Order Act (concerning public meetings, the publication of false news and seditious offences). Please also provide particulars of the outcome of work of the Constitutional Review Committee, to which the Government referred in its 1995 report.

The Committee hopes that the Government will take all necessary measures in the near future.

Sudan (ratification: 1970)

Article 1(d) of the Convention. The Committee notes that sections 112, 119 and 126(2) of the Labour Code of 21 June 1997 specify that labour disputes which cannot be

settled amicably within three weeks will be automatically referred to an arbitration body whose decision will be final and without appeal. Section 126(2) provides for a punishment of imprisonment for a period of up to six months in cases of violation or refusal to apply the provisions of the Code. According to the prison regulations, Chapter IX, section 94, prison labour is compulsory for convicted prisoners.

The Committee notes that the abovementioned provisions reinstate those of the Industrial Relations Act, 1976 (repealed by the Code), which were the subject of earlier comments. The Government indicated in its report that the 1976 Act had been repealed and that no sanctions had been imposed under it.

The Committee requests the Government to indicate measures taken or envisaged to ensure that sanctions involving the obligation to work cannot be used to punish participation in strikes. It requests the Government to forward information on the application of the aforementioned provisions of the Labour Code, particularly regarding the number of persons convicted for having refused to fulfil the decision of an arbitration body, and to supply copies of the relevant judgements.

Article 1(a) of the Convention. In its earlier comments, the Committee referred to the effect that the declaration of emergency and the suspension of the guarantees set forth in the Convention could have on its application. The Committee notes that the declaration of emergency proclaimed in December 1999 is still in force.

The Committee takes note of the situation regarding human rights in Sudan as presented by the United Nations Special Rapporteur of the Commission on Human Rights (UN document A/374 of 11 September 2000). According to this report, while the declaration of emergency was not followed by wide-scale human rights violations, certain concerns remain concerning freedom of association. Moreover, the United Nations Committee on Economic, Social and Cultural Rights noted with concern that "some restrictions on the freedoms of religion, expression and association and peaceful assembly still exist ..." (E.C.12/1/Add.48 of 1 September 2000).

The Committee notes both section 50 of the Penal Code, which allows life imprisonment for whoever commits an act with the intention of destabilizing the constitutional system, and sections 66 and 69 of the same Code. Section 66 provides that whoever publishes false news with the intention of harming the prestige of the State can be sentenced to six months in prison, and section 69 provides that whoever intentionally commits an act intended to disturb the peace can be sentenced to three months in prison. As previously indicated, these sentences include the obligation to perform prison labour.

The Committee recalls that the Convention prohibits all recourse to forced or compulsory labour including compulsory prison labour as a means of political coercion or education or as a punishment for holding or expressing certain political views or views ideologically opposed to the established political, social or economic system.

The Committee also recalls that the protection conferred by the Convention is not limited to activities expressing or manifesting opinions diverging from established principles. Consequently, if certain activities aim to bring about fundamental changes in state institutions, this does not constitute a reason for considering that they escape the protection conferred by the Convention as long as they do not resort to or call for violent means to these ends.

The Committee also observes the importance for the effective respect of the Convention of the legal guarantees regarding freedom of assembly, expression, demonstration and association, and the direct effect which restriction of these rights can have on the application of the Convention. In practice it is often through the exercise of these rights that political opposition to the established system can be shown.

The Committee renews its request to the Government to forward copies of the legislation in force concerning freedom of association, assembly, and expression of political opinion, as well as the regulations adopted pursuant to the declaration of emergency. It also requests the Government to indicate whether the legislation exempts persons convicted for their political views from the obligation to perform prison labour.

United Republic of Tanzania (ratification: 1962)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1(a), (b), (c) and (d) of the Convention. In its earlier comments the Committee referred to a number of provisions contained in the Penal Code, the Newspapers Act, the Merchant Shipping Act and the Industrial Court Act, under which penalties involving compulsory labour may be imposed in circumstances falling within the scope of the Convention. It noted the Government's statement in its report received in 1992 that ministerial consultations aimed at amending the legislation referred to above were continuing, bearing in mind the political situation following the adoption of the ninth constitutional amendment. The Constitution, as amended, has allowed for multi-party politics; and the Political Parties Act, 1992, has provided specifically for formation and registration of political parties.

The Committee expressed the hope that the draft legislation under consideration would provide for the repeal of all provisions which are incompatible with the Convention and that the Government would indicate the action taken in this regard. The Committee also asked the Government to provide information on the amendment or repeal of the provisions of various legal instruments to which it referred in its comments under Convention No. 29 and which are contrary to *Article 1(b)* of this Convention.

The Committee previously noted the Government's indication in its 1996 report that proposals regarding amendment of the Merchant Shipping Act in order to bring it into conformity with the Convention had been submitted by the trade union to the Government for the purpose of being tabled within the Labour Advisory Board (LAB) for consideration by the tripartite partners, and that the Government intended to supply information on the position of the LAB as soon as its work was completed. The Government indicates in its latest report that it is working towards finalizing amendments to the Merchant Shipping Act.

The Committee has noted the Government's indication in its report that the Newspapers Act, Penal Code, Economic and Organized Crime Act, Societies Ordinance and some other pieces of legislation have been referred to the Law Reform Commission, which has prepared a report and submitted it to Parliament. With reference to its observation on Convention No. 29, the Committee also notes from the Government's report that the Human Resources Deployment Act of 1983 has been repealed and replaced by the National Employment Promotion Service Act of 1999 and asks the Government to supply a copy of the repealing text, as well as a copy of the new Act. It also requests once again that copies be supplied of the Political Parties Act, Economic and Organized Crime Act and Penal Code as in force, which the Government referred to as attached to the report, but which have not been received at the ILO.

The Committee trusts that the necessary action will be taken in the near future for the repeal of all provisions incompatible with the Convention, and that the Government will soon report on progress made in this regard. The Committee is again addressing a more detailed request on the above matters directly to the Government.

Thailand (ratification: 1969)

The Committee has noted the Government's report.

1. *Article 1(a) of the Convention.* In its earlier comments, the Committee noted that penalties of imprisonment may be imposed under sections 4, 5, 6 and 8 of the Anti-Communist Activities Act B.E. 2495 (1952) for engaging in communist activities, conducting propaganda or making any preparation with a view to carrying on communist activities, belonging to any communist organization, or attending any communist meeting unless able to prove ignorance of its nature and object. Similarly, under sections 9, 12 and 13 to 17 of the same Act, inserted by the Anti-Communist Activities Act (No. 2) B.E. 2512 (1969), penalties of imprisonment may be imposed for assisting any communist organization or member of such organization in a variety of ways, propagating communist ideology or principles leading to the approval of such ideology, or contravention of restrictions imposed by the Government on movements, activities and liberties of persons in any area classified as a communist infiltration area.

The Government states in its report that the national circumstances have changed considerably since the adoption of the Act, which has come to be considered obsolete and inappropriate to national conditions. The Committee notes with interest the Government's indication that the Act is in the process of revocation and the draft entitled "the Act Repealing the Anti-Communist Activities Act B.E. 2495" has already been passed through the House of Representatives and is being scrutinized by the Ad Hoc Committee of the Senate. It hopes that the Anti-Communist Activities Act B.E. 2495 will be repealed shortly and requests the Government to supply a copy of a repealing text, as soon as it is adopted.

2. *Article 1(c).* Over a number of years, the Committee has been commenting on sections 5, 6 and 7 of the Act for the prevention of desertion or undue absence from merchant ships, B.E. 2466 (1923), which provide for the forcible conveyance of seafarers on board ship to perform their duties. The Committee notes the Government's indications in its report that the Act has not been applied during the past decade and that a committee was established in March 1999 by the Department of Labour Protection and Welfare for considering drafting seafarers' legislation and upgrading their standards of work in compliance with the ILO standards. The Committee hopes that, in the course of the revision of seafarers' legislation, the abovementioned provisions will be repealed or amended so as to bring the legislation into conformity with the Convention and the indicated practice. It asks the Government to provide, in its next report, information on the progress made in this regard.

3. In its earlier comments the Committee noted that under sections 131 and 133 of the Labour Relations Act, B.E. 2518 (1975), penalties of imprisonment (involving compulsory labour) may be imposed on any employee who, even individually, violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18(2), 22(2), 23 to 25, 29(4), or 35(4) of the Labour Relations Act. The Committee pointed out that sections 131 to 133 of the Labour Relations Act

were incompatible with the Convention in so far as the scope of sanctions involving compulsory prison labour is not limited to acts and omissions that impair or are liable to endanger the operation of essential services in the strict sense of the term, or which are committed either in the exercise of functions that are essential to safety or in circumstances where life or health are in danger.

The Government stated in its previous report of 1997 that it agreed that the distinction between essential and non-essential services should be addressed. However, it refers in its latest report of 1999 to a list of services given in section 23 of the Labour Relations Act and in the Ministerial Regulations of the Ministry of Interior No. 2, which in the Government's view can be implied as essential services. The Committee wishes to point out in this connection, with reference to paragraphs 114 and 123 of its 1979 General Survey on the abolition of forced labour, that some of the services listed in section 23 of the Act (such as railway or port services) and all the services mentioned in the Ministerial Regulations No. 2 referred to by the Government, do not seem to meet the criteria of "essential services" in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population).

The Committee therefore expresses firm hope that the Government will reconsider this question in the light of its obligations under *Article 1(c)* of the Convention and that it will provide, in its next report, information on the measures taken in order to ensure compliance with the Convention. Recalling in this context the Government's indication in its 1997 report that the Senate was in fact expected to discuss the definition of "essential services", the Committee asks the Government to indicate whether such discussion took place and to provide full details.

4. *Article 1(d)*: The Committee previously noted that penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes under the Labour Relations Act: (i) section 140 read together with section 35(2), if the Minister orders the strikers to return to work as usual, being of the opinion that the strike may cause serious damage to the national economy or hardship to the public or may affect national security or be contrary to public order; (ii) section 139 read together with section 34(4), (5) and (6), if the party required to comply with an arbitrator's award under section 25 has done so, if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the Minister under section 23(1), (2), (6) or (8) or by the committee under section 24, or if the matter is awaiting the award of labour disputes arbitrators appointed under section 25.

The Government states in its latest report that the Minister shall exercise the powers conferred under section 35 in the case where the strikers may cause serious damage to the national economy or to the public order, and shall not exercise such powers to intervene in any peaceful strike which does not give that effect. The Committee wishes to point out once again that, under the abovementioned provisions of the Act, penalties of imprisonment involving compulsory labour may be imposed for participation in strikes not only where they concern essential services in the strict sense of the term (that is, services whose interruption would endanger the life, the personal safety or the health of the whole or part of the population), but also in a wider range of circumstances which cannot be held to be removed from the scope of *Article 1(d)* of the Convention.

Referring to paragraphs 122 to 132 of its 1979 General Survey on the abolition of forced labour, the Committee trusts that the Government will not fail to take the necessary measures to have the abovementioned provisions amended in order to bring the legislation into conformity with the Convention on this point.

5. In its earlier comments, the Committee noted that under section 117 of the Criminal Code participation in any strike with the purpose of changing the laws of the State, coercing the Government or intimidating the people was punishable with imprisonment (involving compulsory labour). It referred to the explanations provided in paragraph 128 of its 1979 General Survey, where it indicated that, while the prohibition of purely political strikes lies outside the scope of the Convention, in so far as restrictions on the right to engage in such strikes are accompanied by penalties involving compulsory work, they should neither apply to matters likely to be resolved through the signing of a collective agreement nor to matters of a broader economic and social nature affecting the occupational interests of workers.

The Government reaffirms in its latest report that section 117 is only essential to internal security and does not concern the prohibition or restrictions on the right to engage in strikes or collective agreements. It states that this section has never been applied in practice. The Committee therefore again expresses the hope that the necessary action will be taken to remove strikes pursuing economic and social objectives affecting the workers' occupational interests from the scope of sanctions under section 117 of the Criminal Code, in order to bring the legislation into conformity with the Convention and the indicated practice.

6. The Committee previously noted that section 19 of the State Enterprise Labour Relations Act provided that workers of state enterprises may not in any case stage a strike or undertake any activity in the nature of a strike. Under section 45, paragraph 1, of the Act, violation of this prohibition may be punished by imprisonment (with labour) for a term of up to one year; this penalty is doubled in the case of a person who "incites, or aids or abets the commission" of the offence under paragraph 1. Referring to the explanations provided in paragraph 123 of its 1979 General Survey on the abolition of forced labour, the Committee recalled that the imposition of penalties of imprisonment involving compulsory labour on striking employees would be compatible with the Convention only in the case of essential services in the strict sense of the term (i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population).

The Committee notes the Government's statement in its latest report that most of the state enterprises are essential for public service and public utility, and their interruption would cause serious damages to public order, national security and the safety of the population. The Committee wishes to point out once again that the distinction between essential and non-essential services is a functional one and does not depend on private or state ownership of the enterprises concerned. A blanket prohibition of strikes in all state-owned enterprises, if enforced with penalties involving compulsory labour, is incompatible with the Convention.

The Committee notes the Government's indication in its latest report that a draft Bill intended to amend the State Enterprise Labour Relations Act, which had been prepared by the Senate and amended by the Ad Hoc Committee, was rejected by the House of Representatives in August 1999 and, as a result, was withheld for 180 days.

Noting the Government's statement in the report that the draft Bill provides for greater freedom of association rights in the state enterprises, the Committee reiterates its hope that appropriate measures will be taken in the near future with a view to bringing the Act into conformity with the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.

Trinidad and Tobago (ratification: 1963)

The Committee notes the Government's report.

Article 113 and 114 of the Convention. 1. In its earlier comments the Committee referred to sections 157 and 158 of the Shipping Act, 1987, which provide for imprisonment under the Prisons Rules, involving compulsory labour – in cases of disobedience, desertion and absence without leave; and section 162, empowering forcible return on board ship of seafarers in desertion. With reference to paragraphs 110 and 117 of its 1979 General Survey on the abolition of forced labour, the Committee pointed out that these provisions are incompatible with the Convention, in so far as they imply not only sanctions including compulsory work but also legal compulsion in the form of direct physical constraint or the menace of a penalty for participation in strikes or breaches of labour discipline or to ensure performance of services by workers. The Committee notes the Government's indication in the report that the revision of the Shipping Act is currently under way and all these issues are being considered in the process. It expresses firm hope that the revising text will be adopted in the near future and that the legislation will be brought into conformity with the Convention. The Committee requests the Government to provide, in its next report, information on the progress made in this regard.

2. The Committee has previously referred to section 8(1) of the Trade Disputes and Protection of Property Ordinance, which lays down penalties involving compulsory labour for breach of contract by persons employed in certain public services and is not limited in this respect to services whose interruption might endanger the life, personal safety or health of the whole or part of the population. The Committee notes the Government's statement in the report that this legislation will be repealed soon, since it is "colonial" legislation and is not in practice in Trinidad and Tobago. It hopes that the Government will take the necessary measures in order to ensure compliance with the Convention on this point and asks the Government to report any progress achieved in this regard.

3. The Committee's earlier comments referred to section 69(1)(d) and (2) of the Industrial Relations Act, Chapter 88:01, which prohibits teachers from taking part in a strike, subject to penalties of imprisonment involving an obligation to work. The Government indicates in its report that the committee responsible for reviewing the Act has made no recommendation in respect of that issue. The Committee expresses firm hope that the Government will not fail to take appropriate measures in the near future in order to bring the abovementioned provisions of the Industrial Relations Act into conformity with the Convention. It requests the Government to indicate, in its next report, the progress made in this regard.

Tunisia (ratification: 1959)

The Committee notes with interest that Act No. 99-89 of 2 August 1999 has amended section 13 of the Penal Code under which persons sentenced to imprisonment were forced to work. This means that persons sentenced to imprisonment in application of the provisions of the Labour Code on illegal strikes or in application of the provisions on freedom of the press, freedom of association and of gathering will no longer be subject to compulsory prison labour.

Turkey (ratification: 1961)

The Committee notes the Government's report, as well as the comments of the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Confederation of Turkish Employers' Associations (TİSK).

Compulsory prison labour

1. In its previous observation, the Committee asked for a clarification of the effect given to article 18 of the Turkish Constitution concerning the prohibition of forced labour, in relation to any compulsory work carried out in prisons in conditions falling under *Article 1 of the Convention*. In its latest report, the Government refers to the Regulations pertaining to the Administration of Penitentiaries and Detention Centres and to the Execution of Sentences. The Government indicates that especially sections 101, 112 and 197 to 220 of the Regulations are concerned with the employment of convicts and detainees who want to work in the prisons and that, according to these provisions, the purpose of the employment of the convicts and detainees is to rehabilitate them and to teach them a job or craft to earn their living after release. The Government concludes that such employment is covered by the second paragraph of article 18 of the Turkish Constitution as well as by article 4(3)(a), (b), (c) and (d) of the European Convention on Human Rights and is not considered forced or compulsory labour.

2. The Committee has taken due note of these indications. It notes that, under section 198 of the Regulations referred to by the Government, adopted by decision of the Council of Ministers of 5 July 1967, No. 6 8517, on the basis of Act No. 647 of 13 July 1965 on the execution of sentences, prisoners are obliged to work in the institution. In its observation made in 1978 under the Convention, the Committee had noted that, under the terms of Ministry of Justice Circular No. 26 62 of 14 May 1975 addressed to the directors of penal institutions and broadcast by the Turkish radio, persons convicted in circumstances covered by *Article 1* of Convention No. 105 were not compelled to work (but could choose to work and also revoke that choice). It would appear from the Government's latest report that that circular is no longer given effect, and all convicted prisoners (without distinction whatsoever) are obliged to work, as indicated in section 198 of the abovementioned Regulations adopted by decision of 5 July 1967, No. 6 8517 (amended by Act No. 87/12046 of 17 August 1987).

3. The Committee refers to the explanations provided in paragraphs 102-109 of its 1979 General Survey on the abolition of forced labour, where it indicated that the exceptions to the Forced Labour Convention, 1930 (No. 29), and specifically the exclusion of prison labour, do not automatically apply to the Abolition of Forced Labour Convention, 1957 (No. 105), which was designed to supplement the 1930 Convention.

4. As indicated by the Committee in paragraph 105 of its 1979 General Survey:

Clearly, the 1957 Convention does not prohibit the exaction of forced or compulsory labour from common offenders convicted, for example, of robbery, kidnapping, bombing or other acts of violence or acts or omissions that have endangered the life or health of others. Although a prisoner may be directed to work under the menace of a punishment and against his will, the labour in this instance is not imposed on him for one of the reasons cited in the Convention. Consequently, in most cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of the abolition of forced labour Convention. On the other hand, if a person is in any way forced to work because he holds or has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by the Convention.

5. As regards the rehabilitative function of compulsory prison labour, referred to by the Government, the Committee indicated in paragraph 108 of its 1979 General Survey that:

while prison labour exacted from common offenders is intended to reform or rehabilitate them, the same need does not arise in the case of persons convicted for their opinions or for having taken part in a strike. Furthermore, in the case of persons convicted for expressing certain political views, an intention to reform or educate them through labour would in itself be covered by the express terms of the Convention, which applies, *inter alia*, to any form of compulsory labour as a means of political education.

6. For these reasons, the Committee has considered that any sanctions involving compulsory labour, including prison sentences involving compulsory prison labour, are covered by the 1957 Convention in so far as they are imposed in the five cases specified by the Convention.

*Political coercion and punishment for holding views
opposed to the established system
(Article 1(a) of the Convention)*

7. The Committee notes that penalties involving compulsory labour may be imposed under various provisions of national legislation in circumstances falling within Article 1(a) of the Convention, namely:

- (a) section 143 of the Penal Code (participation in foreign associations and institutions without permission of the Government);
- (b) section 159 of the Penal Code (insulting or vilifying, *inter alia*, "Turkism", various state authorities, the state laws or the decisions of the National Grand Assembly);
- (c) section 241 of the Penal Code (public censuring, by ministers of religion, of government administration, state laws or government activities);
- (d) sections 266-268 of the Penal Code (insulting public office holders); in this connection, the Committee notes from section 481 of the Code that, in the cases specified in articles 266, 267 and 268, a demand to prove the truth of the imputation of an act harmful to the honour or dignity of a government official or public servant shall not be sustained and considered, even if the imputed act is related to his or her office or public service;
- (e) section 312, paragraphs 2 and 3, of the Penal Code (publicly inciting hatred and enmity of the population with reference to distinctions of class, race, religion or region);

- (f) section 526, paragraph 2, of the Penal Code (acting contrary to prohibitions or obligations under Act No. 671 concerning the wearing of headgear and Act No. 1353 concerning the adoption and use of Turkish letters);
- (g) section 536, paragraph 2, of the Penal Code (public affixing of printed, handwritten or drawn papers, posters, etc., inter alia, on any kind of means of transportation or privately owned signs or boards, without the permission of the authorities);
- (h) section 8 of the "Act against terrorism", No. 3713 of 12 April 1991 as amended on 13 November 1996 (written or oral propaganda, assemblies, manifestations and demonstrations against the indivisibility of the State).

8. While some of the provisions referred to in paragraph 7 above, in particular under (e) and (h), might appear to be aimed at acts of violence or incitement to the use of violence, armed resistance or an uprising, their actual scope, as shown through their application in practice, is not limited to such acts, but provides for political coercion and the punishment of the peaceful expression of non-violent views that are critical of government policy and the established political system, with penalties involving compulsory labour. In this connection, the Committee notes that in recent years a number of cases, in which penalties involving compulsory labour had been imposed in application of the abovementioned sections 159 and 312, paragraphs 2 and 3, of the Penal Code and section 8 of the "Act against terrorism", were brought before the European Court of Human Rights which held that the convictions based on national law constituted a breach of article 10 of the European Convention on Human Rights, which protects the freedom of expression. The Committee hopes that the necessary measures will soon be adopted with regard to the various provisions referred to in paragraph 7 above to bring national law into conformity with *Article 11a* of the present Convention, and that the Government will report on the action taken to this end.

9. The Committee notes that a range of further provisions of national law provides for the imposition of penalties involving compulsory labour in circumstances defined in terms which are wide enough to give rise to questions about their application in practice. The Committee is dealing with these in a request addressed directly to the Government so as to ascertain compliance with the Convention.

10. The Committee has noted the observation of TÜRK-İS that Council of Ministers Resolution No. 87/11945 of 12 July 1987 provides that conscripts in excess of the needs of the military can be obliged to work in public undertakings in lieu of military service, without their consent and under military discipline. The Committee notes the provisions of section 10 of the Military Service Act, No. 1111, as amended by Act No. 3358, which lays down procedures relating to the surplus reserves, including the procedures concerning the persons liable to military service who are assigned duties in public bodies and institutions. It also notes that, under section 5 of the Council of Ministers Resolution No. 87/11945 of 12 July 1987, adopted pursuant to section 10 of Act No. 1111, the persons liable to perform their military service obligations by working in public bodies and institutions are determined by the drawing of lots from among the persons remaining after subtraction of those wishing to pay the exemption sum and those specified in the categories of education and occupation as needed by the armed forces.

11. The Government indicates in its report that Act No. 3358 was applied between 1987 and 1991, and that since its abrogation in 1991 no conscripts in excess of the needs of the military are employed in public bodies and institutions. While noting this

information, the Committee hopes that the Government will supply a copy of the repealing text and information on measures taken to repeal also the abovementioned Council of Ministers resolution No. 87/11945. It furthermore hopes that the Government will provide a copy of the principles governing the liability to military service of surplus reserves (Council of Ministers resolution No. 86/10266 of 17 January 1986), to which reference is made in the interim section of resolution No. 87/11945, or of any text repealing these principles.

Article 1(c) and (d) of the Convention

12. In earlier comments the Committee had noted that:

- (a) under section 1467 of the Commercial Code (Act No. 6762 of 29 June 1956) seamen may be forcibly conveyed on board ship to perform their duties;
- (b) under section 1469 of the Commercial Code, various breaches of discipline by seamen are punishable with imprisonment (involving, as previously noted, an obligation to perform labour).

The Committee further noted that the Government had submitted to Parliament a Bill to amend section 1467 of the Commercial Code, which empowers the master of a ship to use force to bring deserting seafarers back on board to perform their duties. The Committee notes that the Bill contains a provision limiting the powers of the master under section 1467 to circumstances jeopardizing the safety of the ship or endangering the lives of the passengers and the crew. The Committee hopes that section 1469 of the Commercial Code will likewise be amended to limit its scope to acts endangering the safety of the ship or the lives or health of persons, and that the Government will supply a copy of the amending provisions as soon as they are adopted.

Article 1(d)

13. The Committee notes that Act No. 2822 respecting collective labour agreements, strikes and lockouts, dated 5 May 1983 (L.S. 1983-Tur.2), provides in sections 70, 71, 72, 73, 75, 77 and 79 for penalties involving compulsory labour as a punishment for the participation in unlawful strikes, for disregard of prohibitions to call a strike, for unlawful strikes intended to influence decisions, and for disregard of an order for the suspension of a strike or of restrictions imposed on the number of strike pickets and on the right of peaceful assembly in front of the employer's establishments. The Committee recalls that *Article 1(d)* of the Convention explicitly prohibits the use of sanctions involving any form of compulsory labour "as a punishment for having participated in strikes". However, as indicated in paragraphs 120-132 of the Committee's General Survey of 1979 on the abolition of forced labour, the Committee has considered that *Article 1(d)* of the Convention is not opposed to the punishment of collective acts aimed at paralysing services the interruption of which would endanger the life, personal safety or health of the whole or part of the population; nor to the punishment of participation in purely political strikes, i.e. strikes which are not aimed at furthering the economic and social interests of the participants; nor to the enforcement of the observance of normal procedures to be followed in calling and organizing a strike, provided that the provisions governing these matters do not impose restrictions on the right to strike itself. Referring also to its standing comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the

Committee observes that the abovementioned provisions of Act No. 2822 are not limited in scope to the circumstances thus described. It hopes that the necessary measures will be adopted with regard to Act No. 2822 of 1983 to ensure the observance of *Article 1(d)* of the Abolition of Forced Labour Convention, 1957 (No. 105), and that the Government will report on action taken or contemplated to this end.

Uganda (ratification: 1963)

Article 1(a), (c) and (d) of the Convention. Over a number of years, the Committee has been referring to the following legislation:

- (i) the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour;
- (ii) sections 54(2)(c), 55, 56 and 56A of the Penal Code, empowering the Minister to declare any combination of two or more persons an unlawful society and thus render any speech, publication or activity on behalf of or in support of such combination illegal and punishable with imprisonment (involving an obligation to perform labour);
- (iii) section 16(1)(a) of the Trade Disputes (Arbitration and Settlement) Act, 1964, under which workers employed in "essential services" may be prohibited from terminating their contract of service, even by notice; sections 16, 17 and 20A of the same Act, under which strikes may be prohibited in various services that, while including those generally recognized as essential ones, also extend to other services, and contravention of these prohibitions is punishable with imprisonment (involving an obligation to perform labour).

The Committee has noted the Government's repeated statement in its reports that the labour legislation has been revised to enhance the application of the Convention, but the revised legislation is still in the form of a draft Bill. It also notes the Government's indication in its latest report that the revision of the legislation (Labour Law Reform Project) is going on under the ILO/UNDP consultancy, and that a technical report is expected by the end of November 2000. The Committee expresses firm hope that a Bill to repeal or revise the abovementioned provisions will be adopted in the near future and that the legislation will be brought into conformity with the Convention. It requests the Government to provide information on the progress made in this regard and to communicate a copy of the revised legislation as soon as it is adopted.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Belarus, Belize, Benin, Bolivia, Croatia, Dominica, El Salvador, Fiji, France, Gabon, Grenada, Guinea-Bissau, Hungary, Latvia, Lebanon, Nicaragua, Pakistan, Seychelles, Slovenia, United Republic of Tanzania, Thailand, Turkey, United Arab Emirates, Yemen.*

Information supplied by the *Islamic Republic of Iran* in answer to a direct request has been noted by the Committee.

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Bolivia (ratification: 1973)

The Committee notes with regret that the Government has taken no steps to bring the national legislation into line with the provisions of *Article 8, paragraph 3, of the Convention* under which compensatory rest of a duration at least equivalent to the period provided for under *Article 6* must be granted, without prejudice to any monetary compensation, where temporary exemptions are made in respect of weekly rest. It recalls that since 1976 it has been commenting on the need to amend to this effect section 31 of Regulatory Decree No. 244 of 1943, which provides that remuneration may be granted instead of compensatory rest. The Committee again expresses the hope that the Government will take the necessary steps to this end as soon as possible.

[The Government is asked to report in detail in 2002.]

Colombia (ratification: 1969)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

In comments it has been making for many years, the Committee has noted that under the terms of section 180 of the Labour Code, as amended most recently by Act No. 50 of 1990 to amend the Labour Code, a worker who as an exception works on the compulsory rest day may choose to benefit from compensatory paid leave or financial compensation. The Committee notes the Government's statement in its report that a bill to amend the above provision is currently being examined. The Committee recalls that under *Article 8, paragraph 3*, compensatory rest of a total duration at least equivalent to the period provided for under *Article 6* must be accorded where temporary exemptions are made to the requirements concerning weekly rest. The Committee hopes that the Government will take the necessary measures in the near future to bring its legislation into conformity with the Convention and requests it to provide information on any developments in this respect.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Costa Rica (ratification: 1959)

The Committee notes the Government's report for the period ending June 2000. It has also noted the communication from the Rerum Novarum Confederation of Workers (CTRN), a copy of which has been sent, in September 2000, to the Government which is requested to submit any comments it wishes to make in reply.

The CTRN criticizes the application of sections 150 and 152 of the Labour Code in practice. According to section 150, paragraph (d), commercial establishments have the possibility to remain open on mornings on Sunday and national holidays. According to the CTRN, the employers concerned do not respect the obligation to close in the afternoon. Furthermore, section 152, which specifies a sanction of double remuneration for the worker forgoing weekly rest, does not appear to deter employers' threat of reprisals that discourages workers from denouncing abuses and renders labour inspections ineffective.

The Committee wishes to recall that, under the terms of *Article 7(2) of the Convention*, weekly rest should be provided for each period of seven days to persons to whom special schemes for weekly rest are applied. In this regard, it points out that sections 150 and 152, which permit a general derogation from the provisions of *Article 6* of the Convention, should conform to the limits imposed in *Article 7(1)*, which prescribes the conditions under which special schemes for weekly rest can be taken.

In view of the provisions of abovementioned sections 150 and 152, the Committee requests the Government to envisage amending the national legislation to bring it into full conformity with the provisions of the Convention. The Government is asked to indicate in its next report how the national legislation will then ensure that in the course of each period of seven days at least 24 consecutive hours are strictly granted in commercial establishments as provided for in *Article 6* of the Convention. The Government is also requested to indicate the way in which the national legislation gives effect to *Article 7, paragraph 2*, of the Convention which specifies that all persons to whom special schemes apply shall be entitled, in respect of each period of seven days, to a rest period of not less than 24 hours.

Lastly, the Government is asked to communicate in future all reports of the inspection services and any available statistics that could provide information on the manner in which the Convention is applied in practice, as requested in *Part V of the report form*.

Egypt (ratification: 1958)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

In its previous comments the Committee noted that the Labour Code of 1981 does not ensure that compensatory rest is granted to persons working on the weekly rest day, as required by *Article 8, paragraph 3, of the Convention*, under which compensatory rest must be granted, regardless of any monetary remuneration, when temporary exemptions are made for reasons enumerated in paragraph 1 of the same Article of the Convention. The Committee notes the Government's information in its report that the tripartite committee entrusted with the preparation of the draft consolidated labour code has been informed of the Committee's comments so as to take them into consideration. The Committee hopes that the Government will soon be in a position to provide information on the provisions adopted to bring legislation into conformity with the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Bulgaria, Cameroon, Haiti, Iraq, Spain*.

Information supplied by *Brazil* in answer to a direct request has been noted by the Committee.

Convention No. 107: Indigenous and Tribal Populations, 1957*Argentina (ratification: 1960)*

1. The Committee notes with interest the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) by the Government on 3 July 2000. The Committee therefore requests the Government to send in its first report the information requested in the following comments in relation to Convention No. 169.

2. In its previous observation, the Committee noted the comments transmitted by the Educational Workers' Association of Neuquén (ATEN) which alleged the refusal to recognize lands traditionally occupied by the Mapuche communities, in particular, in the territory of Pulmari. According to the ATEN comments, instead of fulfilling its promises to return the territory of Pulmari to the Mapuche communities, the Government created, by virtue of Decree No. 1410 of 1987, the Pulmari Interstate Corporation (CIP) which brought a case before the courts requesting the eviction of the Mapuches from the lands in question. The Committee once again requests the Government to supply information on the function of the CIP and to indicate its relationship with the lands that were traditionally occupied by the Mapuche peoples. The Committee has also taken note that at the time that the Government transmitted its previous report, the proceedings were before the Federal Penal Court for a decision on whether the special appeal could be brought before the Supreme Court and that, meanwhile, the eviction case against the Mapuches was suspended. The Committee requests the Government to indicate the present state of the case and the situation of the Mapuche communities affected. The Committee asks the Government once again to enter into direct consultations with the communities in question to seek solutions to the matters pending before the courts and to the problem of indigenous representation in the CIP management bodies.

3. The Committee notes that, in accordance with the provisions of Act No. 23302, the National Register of Indigenous Communities has been approved under resolution No. 781 of the former secretariat of social development and that the Government reports that, in this way, constitutional requirements have been fulfilled. Please supply a copy of resolution No. 781 with the first report on Convention No. 169.

4. In regard to the questions raised in its previous direct request, the Committee notes that the national population census that will be carried out in 2000 is expected to include an indigenous component which will allow it to obtain up-to-date information on the number of indigenous peoples in the territory of Argentina. The Committee requests the Government to supply information on the results of the census when available.

5. *Articles 2 and 27.* The Committee requested the Government to take the necessary measures to enable the National Institute of Indigenous Affairs (INAI) to function in the near future with full facilities, as provided in Decree No. 155 of 1989, and to keep it informed of any developments designed to establish full operation of the INAI, as well as to determine the indigenous representation provided under Act No. 23302 of 1985 on indigenous policy. The Government indicates in its report that the form of the INAI structure is still being assessed in accordance with the provisions of Act No. 23302 and that if its establishment is not possible it may take the form of a decentralized body of the Ministry of Social Development and the Environment. The Committee requests the Government once again to keep it informed on any progress made in this matter.

6. The Committee notes that, according to the report, the INAI is endeavouring to generate a true participation by the indigenous peoples in the projects it is financing, through debates, discussions and workshops in the field with the communities affected and by means of consultations with representative indigenous organizations acting as a forum for these communities. The Committee would be grateful if the Government would send specific information on the discussions, workshops and consultations carried out by the INAI in connection with these projects.

7. In its previous comments, the Committee asked the Government to inform it as to whether it had found a solution to the situation reported by the Asociación de Comunidades Aborígenes Lhaka Honat of Salta, regarding the proposed construction of a bridge across the river Pilcomayo which will have a detrimental effect on the indigenous communities in the region. The Committee notes that, during May 2000, the INAI made a visit, along with the head of the under-secretariat of human rights of the Ministry of Justice, to the communities affected. The Government indicates that the General Assembly of Caciques has evaluated various proposals to resolve the situation and has agreed to grant the joint title of ownership of lot 55 to the indigenous peoples who live in the communities affected and, for this purpose, resources will be generated to carry out the necessary surveying. The Committee requests the Government to keep it informed on any progress on this matter.

8. *Articles 5 and 6.* The Committee requested information on the results of the regulatory process in relation to the application of Decree No. 155 of 1989 and Act No. 23302 of 1985, particularly in regard to representation of the indigenous communities on the Coordinating Council of INAI. The Government indicates that this Council has still not been set up because the structure of the INAI has not yet been approved. The Committee requests the Government to take the measures necessary to enable the INAI and the Council to begin functioning.

9. The Committee requested information on application of the legislation relating to land ownership in the provinces of Salta and Neuquén. The Committee notes that, according to the report, the Santiago estate has been expropriated and registered as a communal property. The Government also indicates that, in regard to the province of Neuquén, although there are land transfer issues pending, progress has been made in surveying various indigenous communities to grant ownership. The Committee would be grateful if the Government would keep it informed on this matter.

10. *Article 20.* The Committee notes the Programme to Reinforce Primary Healthcare Attention to the Indigenous "Anahi" communities, dependent on the Ministry of Health and INAI, which will assist indigenous communities by means of special programmes respecting the ancestral practices of the people concerned. The Committee would be grateful if the Government would supply more information on the number of indigenous persons benefiting from the Anahi programme as well as detailed information on the nature of the medical and health programmes provided and the manner in which these services have been adapted to the needs of the communities concerned.

Bangladesh (ratification: 1972)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. The Committee notes the Government's report. It recalls that an armed conflict has been going on in the Chittagong Hill Tracts (CHT) region between government forces and the *Shanti Bahini* (Peace Force), the armed wing of the *Parbatya Chattagram Jana Sanghati Samity* (PCJSS, United Peoples' Party of the CHT) for over 20 years. It notes with interest that a Peace Agreement was signed between the Government and the PCJSS on 2 December 1997, a copy of which the Committee has examined. The Committee hopes the Government will provide detailed information in its next report on the implementation of this Peace Agreement.

2. The Committee notes that, under section 1 of the General Chapter of the Peace Agreement, the CHT is recognized as a region inhabited by tribal peoples and that both sides recognize the need for protecting the characteristics and realizing the overall development of the CHT. It further notes that the Peace Agreement contains a framework for amending the Hill Tracts Districts Local Government Council Acts (Acts No. XIX, XX and XXI of 1989) providing the three district councils with more regulatory and administrative powers. It also provides for the establishment of a regional council, consisting of ex officio members of the district councils as well as other members, with reserved seats for tribals, indirectly elected by the district councils, with regulatory, supervisory and coordinating powers, as well as the establishment of a ministry on Chittagong Hill Tracts Affairs with a tribal minister. The Committee notes that the Peace Agreement also contains provisions for the partial demilitarization of the CHT and amnesty for those armed members of the PCJSS who surrender their arms within a certain time. Finally, the Committee understands that legislation to implement the Peace Agreement has been adopted and is being implemented. The Committee requests the Government to provide it with copies of the relevant legislation and, taking into account the present observation, to clarify the relationship between the Peace Agreement and the new legislation and their respective force under national law, as well as to provide detailed information on their implementation.

3. *Legislation in force.* With reference to its previous comments regarding the concerns of tribal representatives over the possible repeal of the Chittagong Hill Tracts Regulation (No. 1 of 1900) through the Hill Districts (Repeal and Enforcement of Law and Special Provision) Act, 1989, the Committee notes from the Government's report that a committee has been set up to examine the effects of this possible repeal. The Committee understands in this regard that the 1989 Act has not yet entered into force and that a Bill is before Parliament to repeal it, and requests the Government to keep it informed on the status of the Act. The Committee also notes that under section 11 of the Chapter of the Peace Agreement on the Hill Tracts Regional Parishad (council), the regional council to be established is to provide the Government with advice and proposals with regard to any contradiction that may exist between the 1900 Regulation and related laws and regulations, and the 1989 Local Government Council Acts. The Committee also notes that under the Peace Agreement the Government may formulate any law regarding the CHT subject to discussion and the advice of the regional council. In this regard, the Committee requests the Government to provide information on the legal status of the consultation and advisory powers of the regional council, and on the way in which they have been exercised in practice.

4. *Articles 11 and 14 of the Convention.* With reference to its previous comments regarding the power of the district councils to allocate land rights, the Committee notes the Government's comment that a solution for this issue has been provided for in the Peace Agreement. The Committee also notes that, under section 26 of the Chapter of the Peace Agreement on Chittagong Hill Tracts Local Government Hill District Council, no lands in a particular district can be leased out, sold, purchased or transferred without prior permission of the relevant district council, regardless of laws that may stipulate otherwise, with the exception of reserved forest, the Kaptai Hydro-electric Project Area, the Bethunia Satellite Station area, state-owned industrial enterprises and government-owned lands. Please

indicate the proportion of the Chittagong Hill Tracts covered by this exception. The Committee also understands that the Government cannot acquire or transfer any lands, hills and forests under the jurisdiction of a district council without its prior approval.

5. In this respect, the Committee recalls the concern it has previously expressed that the Government should act with dispatch to resolve conflicting land claims between tribals and non-tribals in the CHT, taking into account the number of illegal settlements and the large number of tribals who had fled from their lands. While it is considering the matter in detail in a request addressed directly to the Government, the Committee requests the Government to provide a full report on developments in this regard. This should include information on the procedures established to resolve conflicts, and on their implementation.

6. *Return of tribal refugees.* The Committee notes that, as stated in section 1 of the Chapter of the Peace Agreement on Rehabilitation, General Amnesty and Other Issues, an agreement was signed between the Government and tribal refugee leaders on 9 March 1997 at Agartala, Tripura State, India, with regard to the return of tribal refugees staying in Tripura State. It notes that their return under this scheme will continue unaltered within the framework of the Peace Agreement and that the internally displaced tribals in the three hill districts will be rehabilitated through proper identification by a task force. In this respect, the Committee requests the Government to inform it of the total number of tribal refugees that fall within the rehabilitation scheme, the number of tribal refugees that have been repatriated under the Peace Agreement so far, the assistance they have received upon repatriation and any problems that may have been encountered during and after rehabilitation. It also requests the Government to inform it of the activities of the task force responsible for the rehabilitation of the internally displaced persons, including information on the definition and method used in ascertaining their status, their total number, the number rehabilitated, the assistance they have received and problems that may have been encountered during and after rehabilitation.

7. In addition to the tribal refugees in Tripura State, most of whom have been documented, the Committee understands that a substantial number of undocumented tribal refugees are staying in Mizoram State, India, and that some of these have also been repatriated and rehabilitated. The Committee requests the Government to provide any available information on the total number of undocumented tribal refugees, the number rehabilitated and the assistance they have received. Furthermore, the Committee has received reports that the added pressure of rehabilitated refugees on agricultural activity and food supplies has led to famine in certain areas of the CHT. It has also received reports that the non-deliverance of rehabilitation packages has contributed to this situation and that especially the returnees from Mizoram State have been the victim of this famine. The Committee understands that the Government has supplied food to the affected areas, and requests it to provide information on the number of people affected, and measures taken to alleviate the plight of these people, as well as information on the causes of the food shortage and measures envisaged to provide for a sustainable solution of the problem.

8. *Articles 2 and 10. Alleged human rights violations.* With reference to its previous comments, the Committee notes that the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has stated that the continuing flow of information about abuses committed by the army in the CHT suggests that the Government should establish effective and independent means to monitor the army's counter-insurgency methods in the area (UN document E/CN.4/1997/7). In addition, the Committee continues to receive reports of human rights violations, including reports on violations committed after the signing of the Peace Agreement, against the tribal inhabitants of the CHT. These include reports on the abduction in the night of 11-12 June 1996, of Kalpana Chakma, the Organizing Secretary of the Hill Tracts Women Federation, which, the Committee understands, is of particular concern to the tribal inhabitants of the CHT since her fate

apparently remains unknown and the final report of the three-member inquiry committee was not made public. The Committee requests the Government to provide detailed information on measures taken or contemplated, especially within the framework of the Peace Agreement and its implementation legislation, to protect the life and property of the tribal inhabitants of the CHT.

9. *Planning and execution of development projects (Articles 2, 6 and 27).* The Committee understands that a Ministry on Chittagong Hill Tracts Affairs, as well as an interim Regional Council, has been set up. It requests the Government to provide information on their composition, mandate and powers. It understands that, apart from its administrative and regulatory powers, the Ministry plays an important role in the formulation and planning of development programmes. The Committee requests the Government to provide information on the activities of the Ministry relating to development, including any coordination and executive activities it may undertake. Please provide further information on the impact of the different development projects undertaken or under consideration on the socio-economic and cultural development of the tribal inhabitants of the CHT, including assistance from the International Labour Office which is being proposed, and the modalities for including tribal participation in the formulation and evaluation of the projects outlined in the report. The Committee would also appreciate receiving information on the modalities of tribal participation in the planning and implementation phases of programmes and projects undertaken under the auspices of the various international agencies.

10. The Committee is raising additional points in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

India (ratification: 1958)

The Committee notes that the Government's report on the application of the Convention arrived after its present session had begun, too late to allow the Committee to examine the report in the detail it requires. Accordingly, the Committee must defer consideration of the report until its next session. Noting that the situation of the tribal populations in India is subject to change, the Committee requests the Government to submit information in time for its next session with regard to the points raised in its 1997 observation and direct request, on any matters for which there may have been further developments.

[The Government is asked to report in detail in 2001.]

Iraq (ratification: 1986)

1. The Committee notes from the Government's report in reply to its previous comment that those covered by the Convention in Iraq are a specific group of nomadic Bedouins, and that the State has taken the necessary measures to provide social, cultural, educational and health services with a view to integrating them into society. The Committee requests the Government to indicate the numbers of such people, and their present living situation, and to provide details of the programmes carried out concerning them.

2. As concerns the populations of the southern marsh regions, the Government has indicated that they are not covered by the Convention. The Committee recalls that the

United Nations Special Rapporteur on the Situation of Human Rights in Iraq on several occasions characterized them as being indigenous or tribal populations. It requests the Government to indicate in its next report the characteristics that exclude these populations from the Convention's coverage, as stated in *Article 1 of the Convention*. The Committee also notes the report of the Special Rapporteur to the United Nations Commission on Human Rights (E/CN.4/1999/37, 55th Session, at paragraphs 11-19) regarding grave violations of human rights being committed by the Government of Iraq against the populations of the southern marsh area, including military attacks against civilian settlements and expresses its concern at these reports.

3. To the extent that they may be covered by the Convention, the Committee notes the explanations in the report of the benefits conferred on them by the Third River project, which the Government indicates is having a salutary effect on the environment and has received the support of the inhabitants of the region. Recalling that the project entails draining the marshes in which these groups live, the Committee again requests the Government to provide information on the manner in which protection against displacement from their traditional lands is provided, and how they are compensated for their lost lands.

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In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Bangladesh, Egypt, El Salvador, Guinea-Bissau, Pakistan, Syrian Arab Republic*.

Convention No. 108: Seafarers' Identity Documents, 1958

Russian Federation (ratification: 1969)

The Committee notes the information in the Government's report and notes with interest that article 6 of the Federal Act of 24 June 1999 (No. 118-I Z) regarding amendments and additions to the Federal Act on the Procedure for Leaving and Entering the Russian Federation provides for issuance of a seafarers' identity document to a citizen of the Russian Federation "who is a seafarer for the purpose of ILO Convention No. 108 of 1958".

The Committee recalls the principal difficulties concerning the application of the Convention: the definition of the seafarer for the purpose of this Convention, and respect of the primacy of obligations set forth in the Convention with regard to national laws, regulations and procedures. The Committee further recalls that these problems were addressed in a representation under article 24 of the ILO Constitution in 1996, in annual observations by this Committee since that date, in the Conference Committee on the Application of Standards in 1999, and in a technical assistance mission the same year.

Primacy of obligations under the Convention

The Committee recalls that in its reports the Government refers to article 15 of the Constitution of the Russian Federation, according to which provisions of a ratified treaty prevail over domestic law. The Committee further notes from the Government's 1999 report that "the seafarer's passport is governed both by the Convention and by national laws and regulations relating to procedures for departure from and entry to the Russian

Federation. This is a consequence of the fact that Russian laws and regulations contain provisions that go beyond the requirements of the Convention".

The Committee considers that this statement indicates one of the pivotal problems: Regulations concerning the seafarers' identity document cannot be governed by both the Convention and national laws and regulations unless those laws and regulations are enacted pursuant to conventional obligations and in fulfilment of the purpose of the Convention. As the Government has acknowledged, its laws and regulations exceed the requirements of the Convention, and when this inconsistency impedes implementation of the Convention, the provisions of the Convention must prevail over conflicting national law and practice in general, and in application of the principle of the primacy of international law, as set forth in article 15 of the Constitution of the Russian Federation, in particular.

Occupational status professional qualifications

Both in its report and in the statement before the Committee on the Application of Standards, the Government has expressed the view that the occupational status of the seafarer is not the principal concern of ILO Convention No. 108, but is rather the consequence of certificates issued pursuant to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) of the International Maritime Organization.

The Committee does not wish to comment on instruments adopted under the auspices of another organization, except to draw the Government's attention to the subject-matter of the STCW Convention, which deals with the standards of training for seafarers and their professional qualifications to perform specific work on board ship. The subject-matter of ILO Convention No. 108, as set forth in Article 6, concerns facilitation of the seafarer's professional movements. Identifying the occupational status of these workers is the condition *sine qua non* for determining whether they are entitled to the protection conferred by the Convention.

Scope of the Convention: Who is a seafarer for the purpose of the Convention?

In its 1999 report the Government expressed the view that "the Convention allows national legislation to give a broad interpretation to the categories of persons referred to in Article 1(1) and defined as seafarers for the purposes of the Convention. The competent national authorities may or may not avail themselves of this right as they see fit".

The Committee draws the Government's attention to the drafting of Article 1(1) which not only allows but *requires* national legislation to give a broad interpretation as to the categories of workers on board ship whose occupational status is that of a seafarer and who (if they are nationals of a State party) are entitled to the identity document. The Committee addressed this point in paragraph 83 of the 1999 General Report (International Labour Conference, 87th Session, Report III, Part 1A) in the following terms:

In Article 1(1) the term "seafarer" is used in a broad and almost generic context to mean generally the personnel on board when the ship is at sea. This vision of the seafarer is both logical and in keeping with the essential purpose of the Convention: to allow the

seafarer to take shore leave. Therefore, the concept of seafarer as set forth in *paragraph 1* of the Article is to be understood in terms of a functional analysis, and as a general rule, to which there may be exceptions, members of the crew are seafarers.

Thus, the Committee recalls that *Article 1(1)* sets forth a broad, general rule of *inclusion*, to which there may be a limited number of exceptions, in cases of doubt as to categories of persons (*Article 1, paragraph 2*).

Passports and seafarers' identity documents

Similarly, as regards the identity document/passport dichotomy, the Committee recalls the provisions of *Article 2(1)* of the Convention and its comments in paragraph 76 of the aforementioned General Report. The rule of general application is that the seafarer shall be issued a seafarers' identity document, which is distinct from a passport. This general rule is, however, accompanied by a safeguard clause which provides that:

in exceptional cases where it is impracticable to issue the document to special classes of its seafarers, the Member may issue a passport indicating that its holder is a seafarer, in which case the passport shall have the same effect as a seafarers' identity document for the purpose of the Convention [*Article 2(1)*]. Thus, in exceptional circumstances a passport can become a seafarers' identity document, but the opposite is never possible.

The Committee thus draws the Government's attention to the distinction throughout the Convention between general principles and derogations for exceptional circumstances.

With regard to the application of *Article 3* of the Convention, according to which the identity document shall remain in the seafarer's possession at all times, the Committee notes that the Government states in its report that sections 9 and 10 of the Regulations on the seafarer's passport (Order No. 1508 of 1 December 1997) require the seafarer to surrender the identity document to the authorities for safekeeping within one month after the end of the contract. It notes with interest that seafarers registered with a recruitment or placement service may keep their identity document, pursuant to section 32 of the instructions on procedures for implementing the Regulations on the seafarer's passport (Joint Order No. 81/328 of 30 June 1998).

The Committee recalls, however, that the terms of *Article 3* are unequivocal and sections 9 and 10 of the Regulations conflict with its provisions. It further recalls that the right to continuous possession of the identity document (*Article 3* of the Convention) is separate from the specific and limited conditions for which it may be used (*Article 6* of the Convention).

The Committee observes with concern that the Government has not given effect to most of the substantive recommendations made in various forms by the Committee of Experts and the Governing Body since 1996.

The most recent federal legislation submitted and the identity document itself state that it is "a seafarers' identity document for the purpose of ILO Convention No. 108". The Committee considers that there can no longer be any ambiguity as to what this means, or to the legal measures necessary and available to bring national legislation and regulations into conformity with obligations under the Convention. This involves, in particular: (i) recognition in law of the broad definition of "seafarer" for the purpose of this Convention, as set forth in *Article 1* and recalled by the Committee; and (ii) removing the seafarers' identity document from the laws, regulations and procedures

pertaining to passports – thus recognizing that the legal text governing the seafarers' identity document is indeed the Convention.

The Committee expresses the firm hope that the Government will adopt the necessary measures to bring its law and practice into conformity with the Convention. The Government may wish to request the assistance of the Office to overcome the difficulties in the application of the Convention.

[The Government is asked to report in detail in 2001.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Kyrgyzstan, Latvia, Luxembourg, Poland, Russian Federation*.

Convention No. 111: Discrimination (Employment and Occupation), 1958

Afghanistan (ratification: 1969)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. The Committee notes with regret that no report has been received from the Government. Further to its previous observations, the Committee notes with increasing concern the communication of the International Confederation of Free Trade Unions (ICFTU) dated 15 October 1999, alleging violation of the Convention by the Taliban authorities. In its communication, the ICFTU draws attention to the following United Nations documents: the Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan of the United Nations Commission on Human Rights (E/CN.4/1999/40), the Commission on Human Rights Resolution 1999/9 on the Situation of Human Rights in Afghanistan, the Report of the Secretary-General on the Situation of Women and Girls in Afghanistan of the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/1999/13) and the Sub-Commission Resolution 1999/14 on the Situation of Women and Girls in Afghanistan. The communication was transmitted to the Government for comment on 12 November 1999. Further, the Committee notes the concerns expressed by the Worker and Employer members at the Conference Committee on the Application of Standards in June 1999 on the application of the Convention by Afghanistan.

2. In its previous observation, the Committee had noted with deep concern the continuing grave abuses of the human rights of women in Afghanistan, and in particular the severe restrictions on their education and employment. It noted not only that the widespread discrimination imposing harsh conditions upon women and girls had remained one of the most preoccupying aspects of the situation of human rights in Afghanistan, but that the situation had dramatically deteriorated throughout 1997 and 1998. Further, the Committee noted with grave concern the information contained in the Report of the Special Rapporteur of the United Nations Commission on Human Rights (A/52/493 of 16 October 1997) and the Report of the United Nations Secretary-General (E/CN.4/1998/71 of 12 March 1998), which confirmed earlier comments received in 1997 from the ICFTU, and noted by the Committee, alleging serious violations of the Convention. The Committee also took notice of a number of texts of regulations issued by the Department for the Preservation of Virtue and the Prevention of Vice of Afghanistan restricting women's employment as regards jobs in international and national agencies and in hospitals and clinics. It considered such regulations to constitute a further confirmation of the policy of discrimination against women and girls in education and employment. Noting also that male education has suffered

significantly since the banning of female employment and education by the Taliban authorities and that even the delivery of humanitarian assistance had been seriously obstructed, the Committee requested the Government to provide detailed information on all the measures being taken to remove the restrictions and prohibitions on females in education and employment.

3. Noting the information contained in the abovementioned reports of 1999 of the United Nations, as well as in the latest Interim Report of the UN Special Rapporteur on the Situation of Human Rights in Afghanistan (A/54.422 of 30 September 1999), the Committee remains very concerned about the continuing grave violations of the human rights of women and girls in Afghanistan. The Committee notes from the 1999 Reports of the UN Secretary-General that women continue to be denied the most basic rights, including the right to all levels and types of education and employment outside the home. The impact of the restrictions on women's employment and education has been felt most profoundly in urban areas where women used to work in all sectors of employment, including in scientific, academic and technical fields as well as in government positions. Moreover, the reports indicate that, in certain areas, restrictions imposed by the Department for the Preservation of Virtue and the Prevention of Vice of Afghanistan have been enforced through the use of cruel, inhuman and degrading punishment and ill-treatment, including the beating of women by Taliban guards in public places. The Committee further notes that "hardly any girls and only 24 per cent of the boys attend school" and "that in most parts of the country, women continue to suffer widespread poverty, low literacy levels, limited opportunities to participate in public life, limited availability to health care facilities and restrictions on their employment in urban areas".

4. In its previous observation, the Committee noted the decision of the Kabul Caretaker Shura of 28 April 1998 concerning the employment of female professionals, and hoped that this decision signalled a change in the restrictive policy on women's employment. In this connection, the Committee notes that the UN Special Rapporteur on the Situation of Human Rights in Afghanistan observed some relaxations of the restrictions imposed on the rights of women, notably, that Afghan women are currently allowed to work in the medical sector as doctors and nurses, that a recent edict of 1999 exempted needy widows from the restriction on employment in urban areas, and that on 24 April 1999, the Minister for Health issued a first protocol officially allowing Afghan women to work with a foreign aid organisation. The Committee also notes that a more flexible attitude was expressed by the Taliban representatives with regard to access of girls to education, and that Taliban authorities have allowed support for home-based schools for girls in Kandahar, parallel to improved education for boys. While noting these few positive indications with regard to the employment and education of women and girls, the Committee is, nevertheless, extremely disturbed by the findings of the UN Special Rapporteur on Violence Against Women, who visited Afghanistan in September 1999 and described the violations of human rights and discrimination against women as systematic. The Rapporteur found that the denial of employment to women had resulted in a rise in begging and prostitution in the country. Noting that the restrictions and prohibitions on females in education and employment, referred to in the Committee's previous observation, appear still to be in force and to have detrimental consequences on the livelihoods of women, the Committee urges the Government to remove these restrictions and prohibitions and to take the necessary steps to ensure respect for the basic rights of women and girls in employment and education. The Committee reiterates its previous request to indicate whether any female professionals have been hired or rehired pursuant to the abovementioned decision of the Kabul Caretaker Shura or the other agreements, and to provide general information on how the decision and agreements are applied in practice.

5. The Committee notes from the Interim Report of the Special Rapporteur (30 September 1999) that the Taliban authorities indicated that a Constitution was in

preparation, but that no draft was yet available for discussion. The Committee would be grateful to receive a copy of the draft text of the Constitution, once available.

6. *Discrimination on other grounds.* In its previous observation, the Committee noted with concern that, according to the 1998 report of the UN Secretary General on the Situation of Human Rights in Afghanistan, former members of the Communist Party had suffered discrimination in employment. The Committee noted from the report that measures taken in 1997 affected some 70 professors and lecturers from Kabul University and the Polytechnic Institute, as well as 42 employees from the Taliban Ministry of Public Health and 122 military prosecutors, and it requested full information on all measures taken to ensure non-discrimination in employment and occupation on the basis of political opinion. The Committee has been informed that Afghan intellectuals, community leaders, former army officers and civil servants, as well as locally recruited staff of international organizations, have reportedly been arrested, and tortured or killed, on account of their political activities. It urges the Government to take the necessary measures to ensure non-discrimination in employment and occupation on the basis of political opinion and to provide full information in this regard. Further, the Committee notes that the abovementioned United Nations reports contain indications of grave human rights abuses on grounds of ethnicity, including restrictions on freedom of movement, in particular of the Hazaras in the Central Highlands. The Committee hopes that the next report will contain full information on all measures taken to protect members of ethnic minorities from discrimination in employment and occupation.

7. The Committee urges that full information be provided in the next report on all points covered in its comments which requested detailed information on the abovementioned violations of the Convention and on the points covered in the communication transmitted by the ICFTU in 1997. The Committee must express its growing outrage at the persistence of these developments, which constitute gross and systematic violations of the Convention and of the basic human rights that should be guaranteed to all women as well as men. Noting the detrimental consequences on the well-being of the society as a whole and in particular on the livelihoods of women, the Committee cannot not urge the immediate cessation of all such reprehensible actions.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Angola (ratification: 1976)

The Committee notes the enactment of the General Labour Act, No. 2/00 of 11 February 2000. It notes with interest that section 3(1) of the Act establishes that all citizens are entitled to freely-chosen employment and equality of opportunity, without discrimination on the basis of race, colour, sex, ethnic origin, civil status, social status, religious or political beliefs, union affiliation or language. It also notes with interest that section 20(2)(b) of the Act renders null and void any discriminatory clauses in the employment contract on the basis of age, employment, occupation, salary, seniority or other terms and conditions of employment, factors related to race, colour, sex, citizenship, ethnic origin, civil status, social status, religious or political beliefs, union affiliation, family relationship with another worker, and language. The Committee also notes with interest that section 268 of the Act guarantees women the right to equal treatment and prohibits sex-based discrimination in the workplace, particularly equal access to employment and occupation, equal access to and equal treatment in relation to vocational and on-the-job training, as well as in relation to the classification of jobs and opportunities for advancement. The Committee notes that the Act applies to non-resident

foreign workers (section 1(3)), but excludes from its coverage civil servants and other state employees, permanent employees of consular offices or international organizations, partners in private-sector cooperatives or other non-governmental organizations, home work and casual work (section 2). In view of these exclusions, the Committee would appreciate receiving information on the manner in which the principles of the Convention are applied to these categories of workers not covered by the Act. The Committee also requests the Government to provide detailed information on the measures taken or contemplated to implement the non-discrimination and equality provisions expressed in section 268 of the General Labour Act, including promotional activities, guidance to the labour inspectorate and other enforcement officials, and dissemination of information on the provisions of the Act to workers and employers.

The Committee is raising other points in a request addressed directly to the Government.

Australia (ratification: 1973)

1. The Committee notes the Government's detailed report and the voluminous documentation attached. It notes with interest such publications as the Guide to Preventing Race Discrimination and Racial Harassment in the Workplace published by the Commissioner for Equal Opportunity of Western Australia, and the different initiatives taken at state and federal levels to combat discrimination on the grounds covered by the Convention.

2. In its 1997 direct request, the Committee expressed its concern over the replacement of the Commonwealth Employment Service with the Commonwealth Service Delivery Agency (operating as "Centrelink") and the restructuring of the Office of the Status of Women. The Committee notes the information provided in the report concerning women's policy development, consultation, improvements for women in employment and vocational education and training, women in decision-making, women's wages, employment assistance, and workplace relations. The Committee also takes note of the information provided on the participation rates of Aboriginal women and women from non-English speaking backgrounds in employment and vocational education and training. Regarding action to eliminate gender discrimination, the Committee had expressed concern about reductions in funding for the Office of the Status of Women and the Human Rights and Equal Opportunities Commission; the weakened role of national machinery in providing policy advice on equality issues and in monitoring the effective implementation of such policies; and the continuing adverse situation of Aboriginal and Torres Strait Islander women and of migrant women, whose situation was further compounded by an apparent rise in racism and xenophobia. The Committee also notes the stated intention of the Government to rename the Affirmative Action Act as the Equal Opportunity in the Workplace Act and to emphasize merit, replace the union consultation requirement with a general statement of support for consultation and emphasize a facilitative rather than a punishment approach to compliance. The Committee asks the Government to continue providing information regarding what, if any, impact these measures are having on the effective elimination of the discrimination experienced by women in general, and by indigenous and migrant women in particular, in all of the areas covered by the Convention.

3. The Committee takes note of the different programmes that the Government has implemented to improve educational and employment opportunities for indigenous Australians, including the ABSTUDY income assistance scheme; the National Aboriginal and Torres Strait Islander Education Policy (AEP); the Indigenous Education Direct Assistance Program (IEDA); the measures directed at indigenous Australians through the National Strategy for Vocational Education and Training; and the Community Development Employment Projects Scheme (CDEP). The Committee notes that the indigenous population is growing by more than 2 per cent per annum while the indigenous employment rate is growing at a rate less than 1 per cent per annum, and that lack of job skills and of local employment opportunities are two of the main causes of indigenous unemployment. The Committee requests the Government to provide information concerning the practical impacts and achievements of these educational, training, and employment programmes, especially in light of the unprecedented expansion that the Government acknowledges must take place in indigenous employment. The Committee expresses its concern over the continued high unemployment rate for indigenous Australians (23 per cent compared with 9 per cent for the total population) and notes from the Government's recent report to the United Nations Committee on the Elimination of Racial Discrimination (CERD) that without CDEP, the current indigenous unemployment rate would be about 40 per cent. (CERD C/335 Add.2). The Committee notes also from the same report that the objective of the CDEP scheme was changed on 1 July 1998 to focus more on the provision of work and skills acquisition, and requests the Government to provide information on how this change is affecting employment opportunities for indigenous Australians. The Committee requests the Government to indicate in its next report the progress made in achieving more equality in opportunity and treatment for indigenous Australians.

4. In this connection, the Committee notes the Federal Government's announcement of its intention to restructure the Human Rights and Equal Opportunity Commission by replacing five of the six existing commissioners with three deputy presidents. One of these deputy presidents will have general responsibility for the areas of race discrimination and social justice, but the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner would no longer exist (CERD C/335 Add.2). Please evaluate the impact this decision might have on the employment and occupational opportunities of indigenous Australians.

5. In its 1995 direct request, the Committee expressed the hope that future reports would indicate progress concerning the Government's initiative for implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Committee notes the establishment of the Vocational and Educational Guidance for Aboriginals Scheme (VEGAS), which provides grants to conduct projects for indigenous Australian prisoners which foster positive attitudes towards participation in education, and the Employment and Training Transition Project (ETTP), which aims to make employment, education, and training opportunities more accessible to indigenous offenders in the immediate post-release period (CERD C/335 Add.2). Nevertheless, the Committee expresses its concern over what the Government itself has described as the continuing disproportionately high representation of indigenous Australians in the criminal justice and penal systems and how this may negatively impact on their prospects for employment. The Committee also notes the Government's acknowledgement that the serious socio-economic disadvantage suffered by indigenous

Australians is a major factor in their over-representation in the criminal justice system, and that this increasing over-representation needs to be addressed with an integrated and sustained effort by all Australian governments. The Committee requests the Government to continue to provide information concerning the development and implementation of policies and programmes to address the high incidence of indigenous Australians in the criminal justice and penal systems, and the practical effects of measures taken to reintegrate indigenous offenders into society through education, training, and employment programmes. The Committee expresses particular concern, in this connection, over the concluding observations made by CERD in its March 2000 report, which found that the minimum mandatory sentencing schemes with regard to minor property offences in Western Australia and the Northern Territory appear to target offences that are committed disproportionately by indigenous Australians, especially in the case of juveniles. The Committee expresses its serious concern over the negative impacts that these mandatory sentencing schemes may have on indigenous youths' opportunities for education and employment.

6. The Committee is addressing a request directly to the Government on other points.

Belgium (ratification: 1977)

The Committee notes the adoption of the Act of 7 May 1999 on equality of treatment for men and women. It notes with interest the adoption of this new Act which adds several innovations to existing legislation. It notes that the Act incorporates two European directives, on equality of treatment in occupational social security regimes (96/97/CE), and on the burden of proof in cases of discrimination based on sex (97/80/CE). It notes that the new Act introduces the concept of sexual harassment, that it contains clear definitions of the concepts of "equality of treatment", "direct discrimination" and "indirect discrimination", and addresses classification of occupations, in order to eliminate salary differences between men and women. The Committee would be grateful if the Government would supply, with future reports, information on the implementation of this new Act and its impact on the achievement of equality between men and women in employment.

In addition, a request regarding other points is being addressed directly to the Government.

Bolivia (ratification: 1977)

1. *Discrimination on grounds of sex.* For many years, the Committee has been referring to section 3 of the General Labour Act, under which the proportion of women staff may not exceed 45 per cent in enterprises and establishments which, by their nature, do not require the use of a larger proportion of women workers. The Committee had noted that this provision was prejudicial to equality of opportunity and treatment on grounds of sex and expressed the hope on many occasions that the revision of the General Labour Act would make it possible to comply with the Convention in relation to the equality of men and women in access to employment and occupation. The Government had previously indicated its intention of revising the Act, and then indicated that the draft of a new General Labour Act had been set aside and that, in the context of the programme of national dialogue initiated by the Government, it had been proposed to

establish the parameters for future labour legislation. The Committee notes that, in its last report, the Government states that the General Labour Act remains in force and that there does not appear to have been any progress in amending it. It also notes that, according to the report, the types of enterprises and establishments which, by their nature, do not require the use of women workers include heavy transport and similar enterprises where the objective is that women should not suffer physical or psychological injury, nor damage to their reproductive capacity.

2. The Committee reiterates that this provision is not compatible with *Article 3(c) of the Convention* and requests the Government to take measures to review and amend it. It also recalls that maternity protection measures are intended to protect the maternal function, and are not considered to be in violation of the Convention pursuant to *Article 5*. With reference to *paragraph 5 of the ILO resolution on equal opportunities and equal treatment for men and women in employment*, adopted in 1985, the Committee hopes that the Government will take measures to re-examine, in the light of up-to-date scientific knowledge and technical changes, all protective legislation applying solely to women with a view to revising and repealing it, as appropriate, taking into account measures aimed at promoting equality in employment between men and women. This revision should be carried out in consultation with the representatives of employers' and workers' organizations, and with the participation of women workers. The Committee requests the Government to keep it informed of the measures adopted in this respect and the progress achieved.

3. The Committee is addressing a request directly to the Government on another point.

Bosnia and Herzegovina (ratification: 1993)

1. The Committee recalls that, at its 276th Session (November 1999), the Governing Body of the ILO approved the report of the Committee set up to examine the representation alleging non-observance by Bosnia and Herzegovina of Convention No. 111, made under article 24 of the ILO Constitution, by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (USIBH) and the Union of Metalworkers (SM) and entrusted follow-up of its recommendations to the Committee of Experts (see GB.276/16.4, paragraph 23). According to the Committee of the Governing Body, the facts alleged by the USIBH and the SM – which were not contested by the Government – namely, the dismissal of workers solely on the grounds of their Serbian or Bosnian origin and their replacement by workers of Croatian origin, were corroborated by a consistent body of evidence. The Governing Body Committee therefore considered that the facts constituted a violation of Convention No. 111, since the type of discrimination described in the representation is of the kind prohibited by *Article 1(a)* of that instrument, in that it involved an exclusion based solely on national extraction or religious belief which had the effect of destroying equality of opportunity and treatment in employment and occupation between workers of Croatian extraction and the workers of Bosnian or Serbian extraction employed by the "Aluminium" and "Soko" undertakings. Although the representation refers only to Convention No. 111, the Governing Body Committee considered that the alleged facts also violated certain provisions of the Labour Inspection Convention, 1947 (No. 81), and the Termination of Employment Convention, 1982 (No. 158), both ratified by Bosnia and Herzegovina. The

Committee of Experts therefore requested the Government to supply information on the manner in which it intended to apply the recommendations of the Governing Body Committee.

2. The Committee recalls that it had requested the Government to indicate in its next report the measures taken to ensure that the workers dismissed from the "Aluminium" and "Soko" factories solely on the grounds of their Bosnian or Serbian extraction or their religion: (a) receive adequate compensation for the damage that they have sustained; (b) receive payment of any wage arrears and any other benefits to which they would be entitled if they had not been dismissed; and (c) are as far as possible reinstated in their posts without losing length of service entitlements. It had also requested the Government to indicate whether a formal dismissal procedure, in accordance with the provisions of Convention No. 158, which has been ratified by Bosnia and Herzegovina, had been instituted, in the event that the reinstatement of all or some of the workers in question was not possible.

3. The Committee notes the communications sent to the Office by two workers' organizations during the past 12 months under article 23, paragraph 2, of the ILO Constitution: the first is from the Autonomous Trade Union of Employees of the "Aluminium" Factory at Mostar in the Federation of Bosnia and Herzegovina (one of the two entities comprising Bosnia and Herzegovina) and consists of the workers *currently* employed by this factory; while the second communication is from the USIBH and the trade union organization of the iron mine "Ljubija", at Prijedor, in the Republika Srpska (the other constituent entity of Bosnia and Herzegovina).

4. Before addressing the communications the Committee considers it appropriate to note the adoption by the Federation of Bosnia and Herzegovina of a new Labour Code on 27 October 1999 (Act No. 271/1999) and particularly the content of sections 143 and 144, as amended in August 2000, concerning the severance pay due to workers who lost their employment because of the conflict which ravaged the country from 1992 onwards. Under section 143, a formal dismissal procedure must be initiated once a worker registered on the waiting list is still without employment six months after the date of entry into force of the new Labour Code (5 November 1999) or when a worker "on hold" (that is, who, at 31 December 1999, had found employment but requested clarification of his occupational status from his former employer in the three months following the entry into force of the Labour Code) so requested. Since the workers concerned had at least five years' service, they will be entitled to severance pay calculated on the basis of the number of years of service and the average salary applied in the civil service of the Federation of Bosnia and Herzegovina. Sections 143(a), (b) and (c) describe the recourse open to workers who consider that their employer has violated the rights described in section 143 and provide, in particular, for a Cantonal Commission and a Federal Commission responsible for implementation of section 143. Section 144 affirms the entitlement of workers whose employment was "suspended" under the terms of the legislation in force before the entry into force of the new Labour Code (a suspension which is not recognized by the current Labour Code) to return to their former jobs or to other appropriate jobs within six months from the day of entry into force of Act No. 271/1999.

5. *Communications of the Autonomous Trade Union of Employees of the "Aluminium" Factory.* This organization states in its communication that (a) the

adoption on 28 October 1999 of a new Labour Code, in particular sections 143 and 144, settles the problems raised by the USIBH in its representation concerning the workers who were unable to resume their employment at the end of the civil war because USIBH itself, citing sections 143 and 144, has brought this matter before the managers of the factory "Aluminium" who are in the process of examining it; and (b) that, if the recommendations of the Committee were to be implemented, the workers who were not covered by the USIBH representation would not have the same rights as those to whom the Committee's recommendations were applied. On the one hand, there would be the former employees of the factory "Aluminium" who are currently unemployed and are of Croatian national extraction and could benefit only from application of the abovementioned provisions of the Labour Code; and, on the other, the former employees of the same factory, who are currently unemployed, but who would be able to benefit both from the new provisions of the Labour Code and from the recommendations of the ILO Governing Body Committee.

6. The Committee notes with interest the provisions of the new Labour Code which are designed to provide various levels of compensation to workers who lost their employment during the civil war. In the absence of information from the Government indicating how the managers of the "Aluminium" and "Soko" undertakings intend to link the application of the recommendations made by the ILO Governing Body with these new provisions or of how these workers have actually been compensated, the Committee considers that it is too soon to affirm that the provisions in question settle conclusively the situation of workers in the "Aluminium" and "Soko" factories which made a representation to the ILO under article 24 of the ILO Constitution. In regard to the argument proffered by the Autonomous Trade Union of Employees of the "Aluminium" Factory, namely that workers having made a representation to the ILO Governing Body would benefit not only from payment of the compensation provided in the Labour Code but also from that recommended by the ILO Governing Body, the Committee must insist that it is for the various parties concerned – the Government, the management of the two undertakings, and the workers who made the representation – to apply the provisions of the Labour Code and the recommendations of the Governing Body in such a way that the workers of the "Aluminium" and "Soko" factories who were unable to resume their former employment – solely on the basis of their ethnic origin and/or religious beliefs – can receive appropriate compensation.

7. In the light of the foregoing, the Committee requests the Government to indicate in its next report the measures taken to ensure that the workers dismissed from the "Aluminium" and "Soko" factories solely on the grounds of their Bosnian or Serbian extraction or their religion: (a) receive adequate compensation for the damage they have sustained; (b) receive payment of any wage arrears and any other benefits to which they would be entitled if they had not been dismissed; and (c) are as far as possible reinstated in their posts without losing length of service entitlements. Finally, the Committee would be grateful if the Government would supply statistical data on the national extraction of the current workforce in the "Aluminium" and "Soko" factories.

8. *Communications of the USIBH and the trade union organization of the "Ljubija" iron mine.* According to these organizations, the managers of the mine in question dismissed all the miners who were not Serbs from the abovementioned mine, namely some 2,000 workers, during the civil war which ravaged the country from 1992 onwards. The numerous internal appeals brought by the dismissed workers have not

resulted in their reinstatement and the USIBH has placed the matter before the competent bodies of the ILO. The communication was transmitted to the Government for comment on 10 November 2000. Without entering into the substance of the allegations, the Committee can do no more than note that the facts alleged by the USIBH are similar to those examined by the Governing Body Committee within the context of the abovementioned article 24, namely that there was dismissal (or non-reinstatement) of workers based solely on their national extraction: in the "Aluminium" and "Soko" mines, the dismissed workers were all of Serbian or Bosnian origin; in the "Ljubija" mine, the dismissed workers are apparently all of Bosnian or Croatian origin. The Committee trusts that in its next report the Government will make its comments in reply to these communications. In any event, the Committee wishes to recall that the principle of equality of opportunity and treatment in employment and occupation, laid down in *Article 1 of the Convention*, is of universal application; namely, it applies whatever the national extraction of the worker discriminated against: be it Bosnian, Croatian or Serbian. The Committee expresses the hope that it will be possible to resolve this case in accordance with the developments set out in paragraphs 4 to 6 above.

9. The Committee is aware of the complexity of the situation in Bosnia and Herzegovina and that the country has recently emerged from a civil war fuelled essentially by ethnic and religious conflict. It is convinced that one of the best means of promoting national reconciliation and peace is the establishment of the rule of law and the formulation and implementation of a genuine national policy of equality of opportunity and treatment in all spheres, including employment and occupation. The Committee therefore reiterates the hope that a genuine national policy to promote equality of opportunity and treatment in respect of employment and occupation will be formulated and implemented so as to eliminate all discrimination in this sphere – as called for under *Article 2 of the Convention* – and that the Government will supply detailed information on the measures taken or envisaged in this connection in its next report. It also hopes to receive information on the measures taken to inform and train magistrates, labour inspectors and all other public servants concerned in the application of the Convention and trusts that the Government will send it a copy of the Ombudsman's most recent report, taking into account his action in favour of human rights and the institution of the rule of law, referred to by the United Nations Committee for the Elimination of Racial Discrimination in Decision 6(53). Finally, the primary responsibility incumbent on the State to define and apply a national policy of equality of opportunity and treatment should not make it forget the essential role which must be played by employers' and workers' organizations in the promotion and application of the principle at the workplace, and the Committee would be grateful if the Government would supply detailed information on its methods of cooperation with employers' and workers' organizations to encourage acceptance and observance of this policy.

10. The Committee refers also to the comments made under Conventions Nos. 81 and 158.

Brazil (ratification: 1965)

The Committee notes the communication made by the Inter-American Trade Union Institute for Racial Equality – INSPIR (representing the association of the three following unions: Central Unica dos Trabalhadores, (CUT), Força Sindical (FS) and

Confederação Geral dos Trabalhadores, (CGT) – alleging lack of respect for and systematic violations of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In its communication, INSPIR alleges that, in its last report to the Committee of Experts, the Government provided some data on the incidence of racism in Brazil but did not give the full picture. This, for INSPIR, exemplifies the ambiguity that characterizes the position of the Brazilian Government on racial questions: public recognition of racial inequalities that clearly stem from racism, but no results in terms of government actions within the country. The communication of INSPIR was sent for comments to the Government on 22 November 2000 and the Committee will examine the matter at its next session together with the information requested in its comments in its 1999 observation and direct request.

Bulgaria (ratification: 1960)

1. *Discrimination on the basis of national extraction or religion.* The Committee recalls that, in its previous comments, it expressed its concern at the treatment of the Turkish minority and, more recently, members of the Roma community. It notes that, although certain difficulties persist, specific measures have been taken with a view to fighting against discrimination and the lack of integration of these groups. The Committee notes that in April 1999 the Government adopted a Framework Programme for the Equal Integration of Roma in Bulgarian society. This Programme was prepared on the initiative of the Roma organizations and in discussion with representatives of all the Roma associations in Bulgaria. It contains strategies for achieving equality for Roma, which the Government has expressed its commitment to fulfilling over a ten-year period, with priority given to some core proposals such as the establishment of a specialized body to combat racism and discrimination. The Committee requests the Government to supply information on the implementation of this Programme and the results obtained to date. The Committee notes that, according to a report by the Parliamentary Assembly of the Council of Europe, 80 to 90 per cent of Bulgarian Roma are unemployed and trusts that, in its next report, the Government will supply information on the functioning of its assistance programme for members of this group who are seeking employment and, particularly, on its long-term job creation strategy. More generally, the Committee would be grateful if the Government would supply detailed information on the specific measures taken to combat the prejudice and intolerance suffered by members of national minorities and other groups to the extent that this prejudice leads to discrimination against them in many domains, particularly education and, consequently, in employment opportunities and subsequent working conditions.

2. In regard to the effective application of the Act on Political and Civil Rehabilitation of Repressed Persons, the Committee reiterates its request for information on the number of people – particularly members of the Turkish minority – who have applied for and obtained compensation under the implementing decrees of this Act (Nos. 139 of July 1992 and 249 of December 1992). With respect to restoration of real estate to Bulgarian citizens of Turkish origin who asked to return to the Republic of Turkey or to other countries during the period May–September 1989, the Committee once again expresses the hope that the Government will indicate the number of repatriated workers of Turkish origin who were unemployed but not receiving benefits, who were able to benefit from the compensation provided by Decree No. 170 of 30 August 1990 regarding

the restoration of real estate to Bulgarian citizens of Turkish origin who were forced to sell. In addition, it requests the Government to supply statistical data on the number of Bulgarians of Turkish extraction registered in schools and other educational institutions and on their participation in the labour market, so that it can measure the progress made by this minority in regard to access to employment and occupation.

3. The Committee is raising certain other points in a request addressed directly to the Government.

Chile (ratification: 1971)

1. The Committee notes the information contained in the Government's report, particularly the new legislation adopted concerning non-discrimination. It notes with interest that Act No. 19611 of 16 June 1999 amends articles 1 and 19 of the Chilean Constitution, and provides explicitly for legal equality between men and women. Furthermore, the Committee notes with interest the adoption of Act No. 19591 of 9 November 1998 which amends section 194 of the Labour Code. The new Act provides protection against discrimination for pregnant women workers and prohibits the requirement for a pregnancy test as a condition for employment. The Committee also notes with interest that Act No. 19638 of 14 October 1999 prohibits discrimination on the grounds of religious belief.

2. In regard to discrimination on the grounds of political opinion, the Committee notes that for more than ten years it has been holding a dialogue with the Government requesting the explicit repeal of certain legislative decrees (Nos. 112 and 139 of 1973, 473 and 762 of 1974, 1321 and 1412 of 1976) which grant wide discretionary powers to Chilean university vice-chancellors to suspend academic and administrative posts. The Committee also asked the Government to repeal explicitly section 55 of Legislative Decree No. 153 on the by-laws of the University of Chile and that on the legal status of the University of Santiago de Chile, which both allow the expulsion from or non-admission to these institutions of academics, students and officials because of their political activities.

3. The Government has reiterated once again that the legislative decrees in question have been repealed tacitly and are not in force. In its report, the Government indicates that it does not consider there to be failure to observe the Convention because the universities named in these legislative decrees are not currently subject to the authority of the vice-chancellors mentioned and that for this reason the bases necessary for the law to function do not exist. The report adds that most of the universities mentioned have adopted new statutes which establish the higher authorities by which they are governed. Despite the affirmation in the Government's report, the Committee refers to its previous comments and requests the Government once again to repeal explicitly the legislative decrees in question in order to ensure that they cannot serve as a basis for preventing access to, or for excluding persons from, the universities mentioned in those instruments. The Committee notes that there is a draft framework act for the preparation of new statutes by the state universities and that the new statutes cannot include discriminatory provisions. The Committee requests the Government to continue to supply information about the state of the draft act, to advise the Committee as soon as it has been promulgated in law and to send it a copy for information.

Czech Republic (ratification: 1993)

1. *Discrimination on the basis of political opinion.* The Committee takes note of the detailed information contained in the Government's report concerning the application of Act No. 451 of 1991 (Screening Act) laying down certain political prerequisites for holding a range of jobs and occupations mainly in public institutions but also in the private sector. This Act was the subject of representations under article 24 of the ILO Constitution on two separate occasions (November 1991 and June 1994). In the decisions of these Governing Body committees, the Government was invited to repeal or modify the provisions in the Screening Act that were incompatible with the Convention. In this regard, the Committee recalls that the level of a certain post within a public or private organization may not be determinative as to whether political criteria can be applied in filling it and that what is required is a careful and objective consideration of the inherent requirements of a job on a case-by-case basis. It also recalls that the exclusions imposed on persons for past activities should be proportional to the inherent requirements of a particular job.

2. In its report, the Government indicates that from the date the Act entered into force in 1991, 366,000 certificates were issued by the Minister of the Interior of which only 302 were unfavourable for the individuals concerned. In the year 1999, the Ministry of the Interior issued approximately 6,000 certificates of which 1.4 per cent were unfavourable. Persons who obtain an unfavourable screening certificate can appeal to a court of law and ask for review. In this respect, the Committee notes from the Government's report that no statistics are available on how many individuals appealed to the courts seeking a review of unfavourable screening certificates. It notes that the Government reiterates its intention not to extend the validity of the Act beyond 31 December 2000. It further notes that new legislation concerning the status of employees in the state administration is under preparation. The Committee requests the Government to confirm that the Screening Act has not been extended and it hopes that the new legislation envisaged will not contain provisions incompatible with the Convention.

3. *Discrimination on the basis of other grounds.* The Committee notes with interest that Act No. 167/1999 amended Act No. 1/1991 on employment, and that a new section 1 was introduced, which stipulates as prohibited grounds of discrimination in employment, race, colour, sex, sexual orientation, language, creed and religion, political and other opinion, membership and/or activities in political parties or political movements, national extraction, health condition, age, marital or family status or family responsibilities, except in cases where the law so provides or where there is a valid ground, vital for the performance of the job, inherent in prerequisites, requirements and nature of the job to be performed by the citizen concerned. The Government indicates that by moving the prohibition of discrimination from the preamble to section 1, it would be easier to enforce these provisions and to impose penalties in cases of its violation by employers. The Committee trusts that the Government will indicate the measures taken to ensure its application in practice, including statistical data of cases involving discrimination in employment and occupation.

4. The Committee notes that new institutions have been created including a Council for Human Rights, with a section for combating racism, and an Inter-ministerial Commission for Romany Affairs. The Committee takes note of the information supplied by the Government that a significant change in the state employment policy has taken

place with the adoption of the National Employment Plan in May 1999, which will improve chances of job applicants belonging to vulnerable groups, including Roma job applicants. The Government indicates that it has taken a series of measures on the basis of this Plan, including employment promotion among the long-term unemployed, with emphasis on members of the Roma community and strengthening of legal and institutional tools and machinery designed to combat discriminatory practices in the labour market. The Committee also notes that a special committee was established in 1998 within the Ministry of Labour and Social Affairs to deal specifically with the problems of the Roma community and to improve their situation in the labour market. This committee involves representatives from other ministries as well as Roma employers and associations and concentrates on education, employability and employment. Different measures to promote employment and projects aimed at increasing Roma employment are mentioned in the Government's report, in particular a specialized training programme for social workers that trained 34 unemployed Roma. The Committee also notes the information supplied by the Government regarding the different educational programmes and measures implemented to address the educational needs of Roma children. These programmes include the opening of a secondary school for Roma children where 50 of them are enrolled; assistance to integrate Roma school leavers into social life; measures to train young Romas in different occupations or to continue their general education and integration; hiring Roma educational assistants to participate in language teaching and resocialization activities.

5. The Committee also notes the information contained in the report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (19-30 September 1999), submitted pursuant to the Commission on Human Rights resolution 1998/26 (E/CN.4/2000/16/Add.1). The document points out that both Czech authorities and representatives of non-governmental organizations and Roma community associations admit that the Roma continue to be victims of intolerance and discrimination, particularly regarding employment, housing, education and access to public places. Some employers consider them to be "lazy" or "irregular in their jobs", so that even when they have the necessary qualifications, they are not hired. Statistics compiled by the Council of Nationalities indicates that 70 per cent of the Roma are unemployed and this figure is as high as 90 per cent in certain areas, while the general unemployment rate is 5 per cent. Regarding education, the Special Rapporteur indicates that the educational system tends to relegate Roma children to "special" schools, considered by some to be institutions for the mentally handicapped or for children suffering from what is regarded as asocial behaviour. The Government estimates that 70 to 80 per cent of Roma children attend institutions of this type. As a result, a large number of Roma children leave school without the necessary primary education since special schools are not considered complete primary schools. Uncompleted primary schooling makes studies at secondary school level or in regular apprenticeship impossible. The lack of qualifications among adult Roma is one of the main reasons for their difficulties finding jobs, their dependence on social benefits, and the general marginalization of the entire Roma community.

6. The Committee stresses that the elimination of discrimination in employment and occupation, on all grounds, including national extraction, is critical to sustainable development, all the more so because of the re-emergence of signs of intolerance and racism in some countries. The Committee urges the Government to take measures to

improve significantly the Roma's access to training, education on the same basis as others, as well as to employment and occupation, and to take steps to raise public awareness of the issue of racism in order to promote tolerance, respect and understanding between the Roma community and others in society. It hopes the Government will be able to report progress in positively addressing the serious problems facing Romas in the labour market and in society in general.

7. With reference to its previous comments concerning Act No. 216 of 10 July 1993, which amended the 1990 Higher Education Act, and required the holding of competitions for all jobs of higher education teachers, scientific workers and managers of educational and scientific higher education establishments, the Committee notes from the Government's report that this Act has been abolished and replaced by a new Act on higher education. The Committee however notes that the new Act, under section 77, provides that positions of teachers in public institutions of higher education are to be filled by competition. The Committee asks the Government to indicate whether the new competition procedure has eliminated political opinion as an element to consider in the selection of candidates.

8. Further to previous comments, the Committee requests the Government to provide information on the practical impact of the measures taken to promote equality between women and men in employment and occupation and to raise awareness of girls and young women about employment and training opportunities available to them beyond those considered "typically female" occupations.

Finland (ratification: 1970)

The Committee notes the Government's report, as well as the comments attached to the report of the Chemical Workers' Union, a member of the Central Organization of Finnish Trade Unions (SAK), and the Confederation of Unions for Academic Professionals in Finland (AKAVA).

1. With respect to the employment of women, AKAVA indicates that highly trained young women are primarily employed in fixed-term employment relationships. AKAVA points out that 74 per cent of all male members of AKAVA under 30 have permanent full-time jobs, compared to 36 per cent of female AKAVA members under 30. Of all women below 30 with full-time jobs, 53 per cent are employed on a fixed-term basis. AKAVA indicates that this situation suggests that employers are less inclined to hire young women of childbearing age than young men of the same age.

2. The Committee notes the Government's indication that women's achievement of equal levels of education has not been sufficient to guarantee them equal pay or equal careers in comparison with men. The Government states that gender inequalities persist, primarily with regard to employment opportunities, the nature of employment relationships, and pay. The Committee also notes from the Government's report on the application of the Workers with Family Responsibilities Convention, 1981 (No. 156), that gender-based occupational segregation is more pronounced in Finland than in many other countries in the European Union and that, during 1999, the labour administration will be working on a plan to achieve greater gender desegregation in the Finnish labour market. The report states that the TE (employment and economic development) Centres' Labour Market Departments are formulating a plan for integrating the desegregation policy into the daily work of employment offices and the services they offer, particularly

with regard to training. The Committee also notes that the strategic project, "An equal labour market (2000-2003)", will be launched within the framework of Finland's National Action Plan for Employment and that a project to increase the number of girls and women studying mathematics, physics, chemistry and other technical disciplines has been initiated. It notes the campaign "Information Women", launched in 1999, to increase the proportion of women in the information industry. The Committee notes these measures undertaken by the Finnish Government to address the issues mentioned and promote equal access in employment and occupation. It hopes that the Government will continue to provide information on such measures in future reports, including information regarding the results achieved in this regard.

3. The Chemical Workers' Union states that it is difficult for employees to initiate complaints under the Act on equality between women and men (the Equality Act) due to fears of retaliation. The Committee requests the Government to supply information regarding the number of cases brought before the Equality Ombudsman, the types of cases presented, and the outcomes. Please also indicate any measures taken to protect from retaliation – persons bringing or involved in equality complaints.

Ghana (ratification: 1961)

The Committee notes with regret that for the sixth consecutive year the Government's report has not been received. It must therefore reiterate the points made in previous comments in a new direct request which concerns application of the Convention in free zones, protection from discrimination on grounds of political opinion and promotion of equal opportunity for women in employment.

Greece (ratification: 1984)

1. The Committee notes the adoption of Act No. 2713/1999 respecting the Internal Affairs Service of the Greek police, section 12 of which sets out the reasons and criteria justifying the limitation imposed by Act No. 2226 of 13 December 1994 concerning the percentage of women admitted to the police school (a maximum of 15 per cent) and the fire brigade school (maximum 10 per cent). With regard to the procedure, the Committee is bound to regret that the 1999 text, which provides a justification for these numerical restrictions, was adopted a posteriori, that is five years after the adoption of the text establishing these restrictions. On the substance, the Committee notes that, according to the explanations provided respecting section 12 of Act No. 2713/1999, the percentages fixed correspond to the percentages of posts which may be occupied without distinction by men or women (administrative activities, passport control, traffic police, etc.), while the 85-90 per cent of the remaining posts correspond to functions which, according to section 12, "require such qualities as physical strength, rapidity and endurance which, by common sense and experience, only men possess in view of their biological characteristics". The Committee wishes to recall in this respect that, as it emphasized in its previous comment, in accordance with *Article 1, paragraph 2, of the Convention*, any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination, provided that such distinctions, exclusions or preferences are determined objectively and really take into account the individual capacities of each candidate for a specific job, rather than being extended to all the jobs in a sector of activity. The Committee is of the opinion that in

this instance the exclusion of women from 85-90 per cent of the jobs in the police and fire brigade – on grounds that they have not the necessary physical strength and endurance – demonstrates an absence of an in-depth examination of each case on the basis of the individual capacities of applicants and reflects archaic and stereotyped concepts with regard to respective roles and abilities of men and women. The Committee has noted in its 1996 Special Survey on equality in occupation and employment that the continued exclusion of women from certain posts of authority merely because they are women and encounter negative prejudices is one of the restrictions to be eliminated by methods appropriate to national conditions. The Committee hopes the Government will consider removal of percentage restrictions on women and that it will allow all men and women to compete individually for the posts in question. It requests the Government to continue to provide information on measures taken in this regard.

2. The Committee therefore requests the Government to undertake an in-depth re-examination of the concept of the “qualities required for a specific job”, as it is currently applied in the police force and fire brigade, and hopes that it will take into account objectively: (a) the essential requirements inherent in each category of jobs designated by name; (b) the competence of the individual assigned to carrying out such functions; and where possible (c) the reasonable adaptations which are necessary (that is, which would not impose an excessive burden in terms of cost or inconvenience for the operation of the institutions concerned) to enable women who so wish to have access to certain functions in the police and the fire brigade.

3. The Committee is addressing a request directly to the Government on certain other matters.

Guinea (ratification: 1960)

1. The Committee notes the information contained in the Government's report. Referring to its previous comments concerning the public service, the Committee notes that the Government repeats the indication contained in earlier reports that the Civil Service Act is still in the process of being revised. In this regard, the Committee once again expresses the hope that the Government will amend section 20 of the Order of 5 March 1987 on the general principles of the public service (which prohibits discrimination only on the basis of philosophical or religious views and sex). The Committee recalls that, where provisions are adopted to give effect to the principle of non-discrimination contained in the Convention, they should include all of the grounds set forth in *Article 1(1)(a) of the Convention*.

2. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

3. The Committee is addressing a request directly to the Government on other points.

Guyana (ratification: 1975)

The Committee notes with interest the adoption of the Prevention of Discrimination Act, No. 26 of 1997, which applies to both the public and private sectors. The Committee notes that section 4(2) of the Act prohibits discrimination on the grounds of race, sex, religion, colour, ethnic origin, belonging to indigenous peoples, national

extraction, social origin, economic status, political opinion, disability, having family responsibilities, pregnancy, marital status and age in all matters related to employment. The Committee notes in particular that the Act covers both direct and indirect discrimination on the basis of the aforementioned grounds (section 4(3)) and considers sexual harassment to constitute unlawful discrimination based on sex (section 8). Furthermore, the Act also prohibits discrimination on the part of partnerships, trade unions, and employment agencies (Part V), as well as discrimination with regards to goods and services.

The Committee is raising other points in a request directly addressed to the Government.

Islamic Republic of Iran (ratification: 1964)

1. The Committee takes note of the information provided by the Government in its report and the attached documentation, as well as the information presented in June 2000 during the discussion in the Conference Committee on the Application of Standards. The Committee of Experts recalls that following many years in which it had been raising serious concerns over the application of the Convention with respect to religious minorities and women, in 1999 the Government accepted a technical advisory mission of the ILO to discuss all the points raised in its comments. The Committee viewed this action positively as reflecting a willingness on the part of the Government to continue to engage in substantive dialogue on the application of the Convention.

2. At its last session, the Committee examined with interest the lengthy and detailed report of the mission, which took place from 29 October to 5 November 1999. In its comment the Committee made various references to information obtained during the mission but, as is its practice, it did not attach the mission report to its observation. The Committee notes from the discussion during the Conference Committee that a number of questions were raised concerning the details of the mission, such as the list of contacts, and whether the mission had been able to meet with representatives of non-governmental organizations and with all persons with whom it had requested meetings. The Committee recalls that the mission team held extensive discussions with representatives of all the groups it had asked to meet (with the exception of the statistics office) including official representatives and other members of the recognized minorities, non-governmental organizations, the ministries of justice, education, foreign affairs, labour and social affairs, and the Centre for Women's Participation of the Office of the President, local government officials, university administration, hospital administration and staff, the Islamic Human Rights Commission, as well as numerous members and representatives of the workers' and employers' organizations, including the women's wing of the Workers' House, on all the points raised in the Committee's previous comments. The mission team also held extensive discussions with officials from the Tehran Office of the United Nations Development Programme. The mission report indicates that the team was able to raise freely any question it wanted concerning discrimination on all the grounds set out in the Convention, including the situation of women, and of recognized and non-recognized religious minority groups, including the Baha'is.

3. The Committee notes that in the resolution on the situation of human rights in the Islamic Republic of Iran, adopted in April 2000, the United Nations Commission on

Human Rights welcomed the report of its Special Representative on the situation of human rights in the Islamic Republic of Iran (E/CN.4/2000/35) in which it noted the following points in particular: (a) that there is prospect for substantial and far-reaching change which will have, and in some areas has already had, a positive impact on the human rights situation; (b) that progress has been made in the Islamic Republic of Iran in the area of freedom of expression, in particular towards a more open debate on issues of governance and human rights, although there was still concern at restrictions on the freedom of the press and cases of harassment and intimidation of journalists; and (c) that progress has been made with regard to the status of women in some areas such as education and training, health, and integration of a gender dimension into government planning. At the same time, concern was expressed in the resolution over the continued discrimination and persecution against the Baha'is and the continued lack of full and equal enjoyment by women of their human rights. In August 2000, in his interim report (UN doc. A/55/363), the Special Representative stated that the tangible progress made to date in 2000 has been overshadowed by backsliding in some cases and stagnation in others. The Committee shares the general appreciation and the concern expressed in both this resolution and the Interim Report, in regard to the evaluation of the situation in the Islamic Republic of Iran since its previous observation.

4. *Mechanisms to promote human rights.* Over the years the lack of institutional mechanisms to promote and implement a national policy on non-discrimination and equality has been noted. Last year, for the first time and due to the information gathered during the mission, the Committee noted the establishment of the Supervisory Commission on the Implementation of the Constitution which has as one of its stated operational objectives the review of the interpretation of laws in accordance with international human rights instruments, including this Convention. The Government reports that the Supervisory Commission, in its two years of existence, has tried to implement the Constitution. In the last year, it has held one public meeting on the role of the Commission and the rights guaranteed under the Constitution, including the rights of the various religious denominations. The Committee would be grateful to receive information on any activities undertaken by the Supervisory Commission to specifically promote the application of the Convention as well as other United Nations human rights instruments.

5. The Committee also noted the establishment and functioning of the Islamic Human Rights Commission which has authority to receive complaints from within and outside the country on violations of human rights under Islamic and international treaty law. The Committee noted that, while it has only advisory capacity and cannot order remedies for violations, the jurisdiction of the Commission covers discrimination in employment in both the public and private sectors. It further noted that a few cases had been filed on gender- and religious-based discrimination in employment and occupation, including a case filed by a member of a religion not recognized in the Islamic Republic of Iran, but that the volume of such complaints remained small. The Commission is made up of members from the Islamic Consultative Assembly, the judiciary, and individual lawyers, and, according to the Government, the Commission acts independently from the Government and the judiciary. It sits in closed session, but it also holds yearly public sessions nationwide. The Government indicates that the Commission vigorously investigates, follows and deals with any complaint arising from the public or private sector. The Committee recalls the very detailed report prepared by the secretariat

of the Commission on the examination and pursuit of appeals and allegations of human rights violations provided to the mission team. The Committee requested the Government to continue to supply information on the cases and activities of the Islamic Human Rights Commission and other similar institutions concerning discrimination, promotion of societal tolerance or international human rights; it notes, however, that in its report the Government does not supply any information detailing the nature and status of the allegations or appeals filed with and handled by the Commission over the last year. It therefore requests the Government to continue to supply general information on the activities of this institution and to forward with its next report detailed information on the specific allegations and appeals concerning discrimination in the fields of education and employment handled by the Islamic Human Rights Commission, the actions taken by the Commission and the results achieved.

6. *Discrimination on the basis of sex.* The Committee recalls that it has raised concerns over the years in regard to the situation of women in the labour market and equal access of women to education, training, jobs and terms and conditions of employment. It has addressed *de jure* as well as *de facto* discrimination, noting that it was the *de facto* situation and the status of women in society that presented the greatest obstacles to women's participation in the labour market on an equal basis with that of men. The Committee noted some progress in the increase of women's participation in various sectors of wage and non-wage employment from 1991 to 1996. It also noted that progress has been made in education, that there is a policy to increase the participation of girls in secondary and higher education levels and that there are no longer any restrictions on areas of study for women. The Committee also noted that, in spite of the progress made, women's participation rate in the labour market remained low.

7. The Government reports that the newly adopted five-year national development plan (March 2000-March 2005) promotes opportunities for women in employment and education. According to the Government, one goal of these endeavours is to allow women to be active in all sectors of society. The Government refers to the progress already made in the increase in the number of women in senior elected positions and in respect of the number of women in all levels of education. The Government indicates that at the beginning of the Islamic revolution in the Islamic Republic of Iran women accounted for 24 per cent of the students in higher education and this figure is now up to 41.89 per cent (267,650 out of a total of 638,913). The Government reports that in universities and higher education institutions, for the academic year 1999-2000, 45.62 per cent of those accepted for the first time were women and 54.38 per cent were men. The Government also reports that the number of female apprentices in technical and professional training programmes over the past two years increased by 48.5 per cent over the two previous years to reach 97,604. The Committee also notes the statistics provided by the Government on the steadily increasing number of female students in teacher training courses and the projections to the year 2005 of the increase in the participation of women at all levels of education from both towns and rural areas. Very detailed statistics have been supplied on the number of graduate students and teaching staff, disaggregated by sex, which show that women account for 17.66 per cent of teaching staff in the 1999-2000 academic year. The Government indicates that the increase in education and training should better equip women to enter the labour market. The Committee notes this information with interest and requests the Government to continue to provide such detailed statistics, including a specification of the subjects of study,

training and teaching in which women are participating. It also requests the Government to indicate any measures taken to facilitate women's access to jobs, the employment rates of women graduates and the sectors in which they find employment.

8. The Committee notes from the detailed employment figures provided by the Government that the percentage of women employed as of 1997 was 12.1 per cent, thus reflecting a slight increase over the figure of approximately 10 per cent for 1996. The report indicates that in 1992 women accounted for 24.8 per cent and, in 1998, for 29.2 per cent of the workforce in the public sector. The Government also reports that, countrywide, in 1992, women represented 2.8 per cent of the executive or management-level posts and by 1997 that figure had increased to 12.6 per cent. The Committee again acknowledges the indication of a positive trend in these participation rates. At the same time it must point to the slow pace of the improvement and still low level of women's employment. Noting the current economic situation in the country, and the increase in unemployment, the Committee is concerned that even these slight gains may be eroded in future. It requests the Government to continue to provide as up-to-date as possible information on the labour market including the employment and unemployment rates of women. It also requests the Government to supply statistics available in the Ministry of Industry on the private sector employment participation rates disaggregated by sex.

9. With respect to the most disadvantaged women in the country, the Government provides information on the continuation of the project for employment for single-parent rural women, the increase of women in cooperatives, a detailed description of the projects to promote employment for women under the Ministry of Agriculture and the Ministry of Labour and Social Affairs, and information concerning employment for rural and tribal women.

10. In its previous comment, the Committee noted that one cause of the low employment participation rate of women was the male preference not to hire women, and it requested information on what measures were being taken by the Government to create an environment for equal participation of women in the labour market. The Committee notes that the Government does not directly address this issue. The Committee considers that sensitization campaigns, along with positive action and enforcement of the protections found in the Constitution and Labour Code, are essential to the application of the Convention. Since the Committee notes the Government's indication that it intends to pursue the promotion of equal opportunity and employment for women and that this intention is reflected in the current development plan, it hopes that the next report will indicate the practical measures taken to tackle the attitudinal and other barriers to the full integration of women in economic life on an equal footing with men.

11. The Committee again notes the detailed information provided by the Government on the number of women in the judiciary and the various positions held by them including appellate court counsellors, provincial deputy attorney-generals, deputies in judicial assemblies, judicial counsellors and judges for investigation and enforcement. The Government indicates that there is no discrimination in the employment of women in the judiciary. The Committee must return to the point that it has been raising and which was confirmed by the mission team that, while women's judicial capacity remains influential, it is only advisory, and they are still not allowed to issue judicial verdicts. It requests the Government to indicate whether any review of this practice has been

undertaken in the past year, and hopes that the Government will soon be in a position to report on the removal of the restriction so as to allow women to participate on an equal footing with men in the judicial profession in accordance with the provisions of the Convention.

12. Further to its previous comments on the obligatory dress code and the imposition of sanctions in accordance with the Act on Administrative Infringements for violation of the Code, the Committee noted from the information gathered during the mission and from the Government's reports that any infringements are dealt with through the use of notification procedures and that there has never been a case of dismissal and that persistent violations of the dress code would result in escalated disciplinary procedures, but would not reach the level of dismissal. Moreover, the Government indicates that public servants have the right of appeal and can subsequently seek relief from the Supreme Court for imposition of disciplinary action. The Committee notes this information and recalls its concern over the negative impact that such a requirement may have on access to or security of employment of non-Islamic women in employment in the public sector. It once again requests the Government to supply a complete copy of the Act on Administrative Infringements with its next report, and to continue to supply information on the application in practice of this Act. The Committee would be grateful if the Government would provide information on the number of women belonging to religious minorities who are employed in the public service.

13. The Committee recalls its previous comments on section 1117 of the Civil Code under which a husband may bring a court action to object to his wife taking up a profession or job contrary to the interests of the family or to his or his wife's prestige, and the provision under the 1975 Protection of Family Act which extends to wives as well as husbands the same right to object to the spouse's employment and its request that section 1117 of the Civil Code be repealed. The Committee hopes that its comment will be considered in the review of laws that has been reported to be taking place with a view to altering provisions that are considered to disadvantage women. In the meantime, the Committee requests the Government to provide information on the application in practice of this provision.

14. The Committee notes that one of the objectives of the National Plan of Action for Women prepared for the "Beijing +5" Conference, 2000, is to seek means to ease restrictions on women's employment in certain jobs and to increase women's productivity. The Committee recalls that in its 1996 observation, it reviewed the restrictions authorized by sections 75 et seq. in the Labour Code and found them to be in accordance with protection authorized under other international labour standards or directed at the protection of maternity. In this respect, the Committee notes, as it has for other countries, that any measures of protection for women should be reviewed periodically with the social partners and women themselves in light of the principle of equality of opportunity and scientific and technological developments to determine if they should be retained, repealed or extended to men. The Committee requests the Government to provide detailed information on the review of all laws concerning restrictions on women, such as restrictions on leaving the country for study without permission of the husband, and the resulting changes in or retention of such laws. In this respect, it notes receipt of a large volume entitled *Special laws and regulations for women in the Islamic Republic of Iran* published by the Centre for Women's Participation, of the Office of the President and, after translation of relevant sections,

may have additional points to raise at its next session. From the August 2000 interim report of the United Nations Special Representative, the Committee notes the Bill approved by the Majillis (Parliament) to raise the marriage age of girls to 14 and boys to 17 which in the view of the Committee would have a positive impact on access of women to educational and employment opportunities. It requests the Government to provide information on the adoption of this law.

15. *Discrimination on the basis of religion.* The Committee recalls that since section 6 of the Labour Code does not include reference to non-discrimination on grounds of religion, it has been monitoring the employment situation of the recognized religious minorities (Christians, Jews and Zoroastrians). While it has found that the employment situation of members of these religious minorities is better than the national average, it has also noted the preference given to Muslims in hiring practices. The Committee continues, as in the past, to point to the importance of continuing to take measures prohibiting discrimination on grounds of religion, to promote non-discrimination on grounds of religion, and to be vigilant in prohibiting the use of job advertisements to restrict applicants to a specified religious group. The Committee notes that the Government's report provides no new information on the situation of the recognized religious minorities apart from the holding of one seminar on the protection of minorities under the Constitution. The Committee requests the Government to continue to provide information on the education and employment situation of members of the recognized minorities and on the measures taken to prohibit discrimination on the grounds of religion. The Committee repeats its request for statistical information on the participation rates of recognized minority men and women in the labour market, and their employment levels in the public and private sectors. It encourages the Government to continue to initiate measures to foster tolerance and respect in the society for all religious groups and to eliminate discrimination in employment and occupation, and to report on such measures taken.

16. The Committee has been expressing its concern for many years now over the treatment in education and employment of members of the unrecognized religions, in particular the members of the Baha'i faith. The Committee noted last year from the mission report that sensitivity regarding the subject of the Baha'i in the country goes beyond any formal restrictions and exclusions which may exist, and extends to the societal attitude towards members of this group. In the public sector, the Committee notes that formal restrictions on the hiring of the members of the Baha'i do exist, though the mission was not shown any legal text to this effect. No statistics could be produced indicating the number of members of the Baha'i (or any other unrecognized religion) in the public service, nor was there any record of complaints filed on the grounds of religious discrimination. The mission report indicates that there remains an apparently widespread conviction among the people of the country that all members of the Baha'i work against the interest of the Islamic Republic of Iran, and thus may not be trusted at any level of government, even in the absence of concrete evidence to this effect. At the same time, the Committee notes that there appears to be an effort to remove barriers in regulations and directives with respect to unrecognized religious groups and to promote greater tolerance for them, but that this process was expected to take some time and that opinions remained divided on it. In the private sector, the Committee notes that no formal restrictions on the hiring of members of unrecognized religions, including the Baha'i, appear to exist, but in practice these persons may experience difficulty in access

to education, jobs and occupations. The Committee notes with interest the reported elimination of discrimination against Baha'i youth in enrolment in the pre-university year at the high-school level, while remaining concerned that their entry to universities continues to be refused and that the Open Baha'i University, a correspondence school, was closed down.

17. The Committee notes that the Government's latest report does not indicate that any measures have been taken to address the issue of the Baha'is. It nevertheless notes from the Interim Report of the Special Representative of the United Nations Commission on Human Rights that, following a decision of the Expediency Council to endorse a concept of citizen's rights, the Registration Department abolished the requirement for the declaration on religion on application to register a marriage. The Committee shares the Special Representative's view that this measure is a welcome development that will positively benefit the rights of Baha'i women and children. The Special Rapporteur also indicates that there is now the prospect that university entrance will be the next sector in which religious discrimination of this nature will be removed. The Committee requests the Government to make every effort to continue to work towards the elimination of both formal and de facto discrimination against the members of the non-recognized religious groups in education and employment in accordance with the requirements of the Convention.

18. The Committee refers to the discussion in the Conference Committee on the Application of Standards concerning the adoption of the Act to exempt from the application of the Labour Code workplaces and businesses of five or fewer employees until 2005. The Committee notes that the representative of the Government indicated that the Labour Ministry had opposed this amendment and that it was hoped that the Act would not enter into effect. The report of the Government does not provide any additional information on this point. The Committee notes from the discussion that the criterion for limiting the application of the Labour Code, the number of employees, does not per se violate the Convention as it is not based on one of the criteria set out in *Article 1(a) of the Convention*. The Committee is nevertheless concerned over the manner in which those in the exempted enterprises, in particular women and minorities, will be protected against discrimination in employment. It therefore requests the Government to provide information on the status of the Act, and in the event it is in force, on the measures taken to ensure the application of the Convention to those exempted from the Labour Code.

19. *Tripartite consultation*. The Committee recalls that the provisions of the Convention require the policy of non-discrimination and promotion of equality to be implemented in cooperation with the social partners. It would be grateful if the Government would provide information on their involvement in the promotion of the application of the Convention.

20. The Committee notes the continued dialogue with the Government, the increasing technical cooperation activities with the Office, and the participation of the Office in a human rights technical cooperation and education programme in collaboration with the Islamic Commission on Human Rights and the United Nations Office of the High Commissioner for Human Rights. It notes in particular that a training session on the ILO's fundamental Conventions is to be held in the Islamic Republic of Iran in April 2001. The Committee encourages the continuing collaboration between the

Office and the Government. The Committee nevertheless remains concerned over the gap there remains between the Government's avowed intentions, and the measures that have actually been taken to eliminate discrimination in employment and occupation. It also encourages the Government to take the initiative to transform its stated objectives and intentions into concrete measures designed to promote the full application of the Convention.

Libyan Arab Jamahiriya (ratification: 1961)

1. The Committee has noted the communication from the International Confederation of Free Trade Unions (ICFTU) alleging that the Libyan Government has not fulfilled its obligations under the Protection of Wages Convention, 1949 (No. 95), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). According to the ICFTU communication, acts of violence, stemming from the anti-black sentiment in the population, were perpetrated by young Libyans against black Africans following the Libyan authorities' decision to take drastic measures against employment of foreigners. The ICFTU communication was transmitted to the Government for comment on 3 November 2000. The Government is requested to supply any information in response that it may wish the Committee to consider during its examination of the question at its forthcoming session.

2. The Committee notes with regret that once again the Government's report does not reply to any of the points raised in its previous comments. The information in the new report is of a general nature and most of it has already been received by the Committee. The Government affirms once again that there is no discrimination in employment and occupation and gives as evidence of this the lack of complaints concerning this matter. The Committee is of the view, however, that the absence of legal proceedings, far from being an indication of lack of discrimination, tends rather to conceal the discrimination which actually exists. In fact, as it has frequently explained, it is difficult to accept statements to the effect that the application of the Convention gives rise to no difficulties or that the Convention is fully applied, particularly when no other details are given on the content and methods of implementing the national policy on the promotion of equal opportunity and treatment. The Committee notes that the Government lists in its report, a number of legislative texts in support of its affirmation: the Big Green Book and Act No. 5/1991 on the application of principles of the Big Green Book on human rights; the Labour Code (Act No. 58/1970) and its implementing regulations and decrees; Act No. 55/1976 on service; Act No. 15/1981 concerning the salary system; and Act No. 20/1991 on the promotion of freedom. While the Committee recognizes that incorporation in national standards of the principle enshrined in the Convention is an essential prerequisite for application of the principle of equality of opportunity and treatment in employment and occupation, it emphasizes that this is only one stage. There must also be an active policy to promote equality of opportunity and treatment in employment so that the principle, enshrined in the national legislation, is effectively applied in practice and does not remain a dead letter. The Committee therefore once again requests the Government to supply detailed information on the measures taken or envisaged to ensure effective application of the principle of equality of opportunity and treatment in employment and particularly on the practical effect given to the abovementioned Act No. 20/1991 which, according to the Government, is the

keystone of the national policy to combat all discrimination on the basis of the seven grounds set out by the Convention in *Article 1, paragraph 1(a)*. Please indicate, for example, how public education and information on the national policy to combat discrimination are ensured or encouraged, and the measures taken to obtain the cooperation of employers' and workers' organizations in promoting the acceptance and application of the Act.

3. In regard more specifically to discrimination on the basis of sex, the Committee recalls that, like the United Nations Committee on the Elimination of Discrimination Against Women (United Nations document A/49/38 of 12 April 1994), the Committee emphasized in its previous comment that it is not possible to speak of equal rights for women and yet to maintain a single sexual stereotype of the role of women exclusively as housewives. In this respect, it notes the Government's statement that women in the country occupy very senior positions in the civil service (state prosecutor, ambassadress, minister, etc.), to which they have acceded on the basis of their personal merit, and not because there are posts specifically reserved for men or for women. Noting that access to the civil service and career development is based on the individual competence of the persons concerned (qualifications, years of service, experience, skills) and not on characteristics unrelated to the requirements inherent in a particular post, the Committee requests the Government to supply statistical data in its next report on the quantitative as well as the qualitative position of women on the labour market, in both the public and private sectors.

4. The Committee notes that the Government's report contains no reply to the other points raised in its previous comments and urges the Government to ensure that its next report provides detailed answers to the following points:

- (a) What measures have been taken to give effect to Decision No. 164 of 1988 of the People's General Committee concerning the system of employment of Libyan women and Act No. 8 of 1989 concerning the right of women to have access to the magistrature?
- (b) Please provide copies of reports or studies which illustrate the implementation of the principle of equality of opportunity and treatment between men and women with regard to access to employment and terms and conditions of employment in both the public and private sectors.

5. The Committee trusts that the Government will make every effort to supply the information requested in order to allow the Committee to assess the effective application of the Convention.

Norway (ratification: 1966)

In addition to the numerous activities the Government has been undertaking over the years to promote gender equality, the Committee notes with interest the wide range of measures recently taken by the Government to promote equality of opportunity on grounds of race and national extraction in access to employment and occupation including the Governmental Plan of Action to Combat Racism and Discrimination (1998-2001), the establishment of a Centre to Combat Ethnic Discrimination, the creation of a committee to review legislation on racial discrimination, and the database for recognition of foreign workers' academic qualifications. It also notes the

Government's public apology for past injustices to the Roma people (travellers) in February 1998.

The Committee is raising other points in a request addressed directly to the Government.

Paraguay (ratification: 1967)

Discrimination on the basis of political opinion. In its earlier observation, the Committee noted with interest that, according to the Government's report, section 95 of the Bill on the Status of Civil Servants and Public Employees, which was before the National Parliament, would repeal Act No. 200 of 17 July 1970, which, by stating that "no public official may engage in activities contrary to public order or to the democratic system established by the Constitution", could give rise to discriminatory practices based on political opinion. The Committee notes from the Government's report that to date no Act in respect of public servants has been approved and that three Bills are before the National Parliament, of which one has the approval of the Drafting Committee. Recalling that it has been pointing out since 1985 that the section 34 of the abovementioned Act is in contravention of Article 1(1)(a) of the Convention, the Committee again urges the Government to take the measures necessary to repeal Act No. 200 and requests it to continue to provide information in this respect.

Qatar (ratification: 1976)

1. The Committee notes the communication from the International Confederation of Arab Trade Unions (ICATU) and the Government's reply to it. Noting that in its communication the ICATU alleges breach of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee draws attention to the fact that Qatar has not ratified Convention No. 87. Consequently, in examining the comments of the ICATU, it will consider only those that concern the application of Convention No. 111.

2. The ICATU also refers to differences in the treatment of national workers and foreign workers as regards the content of their work contracts. Noting that the Government provides information on the treatment of foreign workers, the Committee points out that "nationality" is not one of the seven grounds of discrimination in employment and occupation formally prohibited by Convention No. 111 (namely race, colour, sex, religion, political opinion, national extraction and social origin) and that Qatar has ratified neither of the ILO Conventions on migrant workers. The Committee is therefore not in a position to express any opinion on this matter.

3. In its communication the ICATU states that the Government is in breach of Convention No. 111 in that there is blatant discrimination in employment on grounds of gender, race, nationality and religion. The ICATU supplies no documentary information in support of its allegations but indicates that, since the efforts it has made at numerous International Labour Conferences and Arab Labour Conferences to convince the Government to change its attitude have borne no fruit, it has decided to call on the ILO's supervisory machinery.

4. In its observation on the ICATU communication, the Government states that labour law and regulations are free from all discrimination on grounds of sex, as are all other laws. The Government cites the legislation on education, health and social security as an example. The Government informs the Committee that it has just adopted a five-year plan (2001-05) for the training and rehabilitation of secondary school, technical and university graduates so as to open up new employment opportunities for women and to encourage them to opt for training which is adapted to the needs of the labour market, in both the mixed and the private sectors. Throughout the five-year plan period, 437 female university graduates and 388 secondary school graduates are to be trained for the private and mixed sectors and 200 female graduates of the technical college are to be trained to work in the government sector. The Government also places emphasis on the efforts made, with ILO technical assistance, to promote career and employment opportunities for Qatari women. Lastly, as regards foreign workers, the Government affirms that Qatar is an open country in which tens of thousands of foreign workers of different nationalities and religions live. The Committee observes that the information supplied by the Government is closely linked to the dialogue that has been ongoing between the former and the latter for a number of years. In the absence of more detailed information from the ICATU, the Committee is bound to return to the points raised in its previous comments.

5. With regard to the adoption of the five-year plan (2001-05), the Committee recalls that in its previous comments it already noted the relatively high number of women students registered at the Institute of Technology of the University of Qatar, and that it asked the Government to provide information on the distribution of men and women in the various types of programme provided by this Institute and also by the Occupational Training and Development Centre, the Secondary Technical School of Nursing, the Institute of Development Management and the Institute for Banking Training of Qatar, and, if possible, on the type of jobs taken up by men and women students at the end of the various courses. The Committee would therefore be grateful if the Government would provide the information requested and keep it informed of progress in the implementation of the abovementioned plan and of the results obtained.

6. Regarding more specifically the employment of women, the Committee recalls that in its previous comments it noted that outside the fields of education and health, women's participation in the labour market remained generally very low. It therefore suggested that the Government take specific steps to create conditions to encourage women to train for different occupations and professions – including occupations traditionally considered to be male – and to send a list of the jobs from which women are formally banned. It also requested a copy of the recommendations adopted by the conference on “Women and the Labour Market” held in Qatar in 1997, along with information on the implementation of those recommendations and the results obtained to date. It trusts that the Government's next report will contain the information requested.

7. Noting that by virtue of the Constitution equality of rights and duties among all citizens without discrimination on grounds of race, sex or religion is a fundamental principle of national policy, the Committee recalls that it is important that the Government should give its attention to *all* sources of discrimination envisaged by the Convention. It therefore asks the Government to indicate how protection against discrimination in employment and occupation on the basis of race, colour, national extraction and religion is ensured in law and in practice.

8. The Committee is raising other points in a request addressed directly to the Government.

Saudi Arabia (ratification: 1978)

1. The Committee notes the communication from the International Confederation of Arab Trade Unions (ICATU) concerning the application of Conventions Nos. 87 and 111 and the response of the Government. It also notes that part of the communication is relevant to Convention No. 29 and raises those points under the application of that Convention. In its communication the ICATU states that differences in wages between the Saudi and non-Saudi workers, especially those from the poorer countries, are vast and that discrimination exists between men and women, ethnic groups, nationalities, races and religions. The Government replies that wages are set according to the nature of the work, the worker's abilities, aptitudes, experience and qualifications and the nature and type of the enterprise. The Government further refutes the impression given by the wide-ranging allegation concerning occupational discrimination between men and women and between nationalities, races and religions. The Government affirms that society is not based on discrimination and that it shows the greatest respect for the principles, purposes and Constitution of the ILO. The Government nevertheless indicates its willingness to engage in a constructive dialogue on these questions.

2. Noting that the Government's report contains no new information, the Committee recalls that, for a number of years, its dialogue with the Government has focused primarily on two matters: (a) section 160 of the 1969 Labour Code, which provides that "in no case may men and women co-mingle in the place of employment or in the accessory facilities or other appurtenances thereto"; and (b) access of Saudi women to education and vocational training for occupations not traditionally deemed to be "feminine" in nature. The Committee notes the Government's statements that the Convention is applied in Saudi Arabia through Islamic law, the Sharia, which forms the basis for the general legal system in the country, and that the Sharia and the basic system of government promulgated by Royal Decree A/90 of 1992 provide for justice and equality in all matters without any discrimination on the basis of race, religion, sex or colour. In this connection, the Committee has for some years drawn the Government's attention to *Article 2 of the Convention*, which requires the Government to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation by methods appropriate to national conditions and practice, with a view to eliminating any discrimination in respect thereof.

3. In its report, the Government states once again that no measures have been taken to give effect to the provisions of the Convention, apart from those referred to in earlier reports. The Committee had noted the Government's explanations in earlier reports that the prohibition in section 160 against co-mingling of men and women reflects Islamic social traditions that apply across Saudi society generally, and that the Labour Code contains no provisions that discriminate on the basis of sex. The Committee had also previously noted the Government's statements in earlier reports that there is no discrimination on the basis of sex in practice and that Saudi women have access to the various sectors of employment and may choose freely the occupations that suit them. While the Committee welcomes these statements, it has observed that this social tradition, now codified in the positive law in section 160, may result in de facto

occupational segregation on the basis of sex, restricting women's access to certain jobs and occupations. The Committee welcomes the information provided by the Government indicating that the legislative prohibition on co-mingling in the workplace has not impeded women's access to occupations in a number of sectors also occupied by men, including commerce, industry, education and medicine. Unfortunately, the Government is unable once again to provide statistics on the number of women participating in these occupations. The Committee requests the Government to continue to provide information, including statistical data, in its next report, on the distribution of men and women in the various jobs and occupations which they may choose freely in spite of the prohibitions imposed under section 160. With respect to those jobs or occupations from which women are precluded by virtue of section 160, please indicate whether any measures are under study or contemplated to extend women's occupational and employment possibilities into those precluded areas in conformity with the Convention.

4. With regard to the issue of Saudi women's access to education and vocational training, the Government has indicated in earlier reports that many Saudi women choose not to work, believing that their primary duties are to bring up their children and look after their homes. The Committee has noted the Government's comments that the vocational training programmes available provide training in work that is beneficial to women and their families if they decide to remain at home. According to information provided in earlier reports, the Government indicated its intent to increase the capacities of existing centres for women as well as to inaugurate new centres and introduce new areas of specialization. In addition to the women's training institutes mentioned in earlier reports, the Government stated that men and women are also trained side by side in a number of areas, including education, medicine, pharmacy, health inspection, nutrition, laboratory work, secretarial work, statistics, librarianship and administrative and financial tasks. The Government's previous reports provided statistical data indicating that, in the academic year 1994-95, male students outnumbered female students at all levels of education, including in vocational and educational training centres, where approximately half as many women (3,206) as men (6,496) were enrolled. The Committee would appreciate receiving information in the Government's next report on all measures taken to implement the national policy on non-discrimination in vocational education and training. Noting that the numbers of women participating in education and training is not reflected in the workforce, the Committee requests the Government to provide any information on career guidance and placement services.

5. Noting that no information has been provided by the Government as to discrimination on grounds other than sex, the Committee requests the Government to provide information on measures taken to prohibit discrimination on the grounds of religion, political opinion, race and national extraction in employment and occupation in accordance with the Convention.

6. The Committee is addressing a request directly to the Government on other points.

Sierra Leone (ratification: 1966)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. In its previous comment, the Committee had noted with interest that the new Constitution (Act No. 6 of 1991) no longer made provision for a one-party system and did not reserve certain high-level public offices for members of the recognized party, as had the Constitution of 1978. (The previous Constitution of 1961, which had included a general provision for the protection of fundamental rights and freedoms on most of the grounds of the Convention was suspended in 1968.) The Committee had also noted with interest that article 8(3) of the new Constitution directs state policy towards ensuring that every citizen, without distinction on any grounds whatsoever, should have the opportunity for securing adequate means of livelihood and adequate opportunities to secure suitable employment and that article 15 lays down certain fundamental human rights and freedoms for all individuals irrespective of race, tribe, place of origin, political opinion, colour, creed or sex. As there had been no progress towards enunciating a national policy to promote equality of opportunity and treatment in employment and occupation, as required by *Article 2 of the Convention*, the Committee had hoped that, in the light of the new Constitutional provisions and, especially, those of article 8(3), the Government would proceed to formulate a national policy, in consultation with the tripartite Joint Consultative Committee.

2. In its reports, the Government states that, despite the suspension of the 1991 Constitution, the Government has a broad-based policy which ensures jobs for all who apply, regardless of sex, religion, ethnicity and political opinion. The Government also states that the Joint Consultative Committee has yet to make its final recommendations on a national policy. The Committee notes this information with concern. It recalls that in the 30 years since the Convention's ratification, the Government has reported consistently that no legislation or administrative regulation or other measures exist to give effect to the provisions of the Convention and that no national policy has been declared, pursuant to *Article 2*. With the suspension of the 1991 Constitution, there is no national legal instrument or formally declared policy in the country which provides any protection against discrimination. The Committee hopes that the Government will respect its obligations under the Convention. In particular, it trusts that a national policy on discrimination will be formulated, as required by the Convention, and that full details will be provided in the Government's next report, on the measures being taken and contemplated to apply the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Spain (ratification: 1967)

1. The Committee notes the communication presented by the General Workers' Union (UGT) dated 20 January 2000. It also notes the communication of the Democratic Confederation of Labour (CDT) of Morocco, dated 29 February 2000. The Committee notes the Government's reply, dated 20 September 2000, to the CDT's communication. The Committee will address only those issues relevant to the application of Convention No. 111 in this comment.

2. *Discrimination on the basis of sex.* The UGT's comments indicate that, while the situation of women in the Spanish labour market has improved, women are still disadvantaged, particularly in respect of access to employment and equality of remuneration. The Committee invites the Government to submit any response it may deem appropriate to the UGT's comments, which the Committee will examine at its next session.

3. *Discrimination on the basis of race, colour, religion and national extraction.* The CDT communication describes the events that took place during the

month of February 2000 in El Ejido (Province of Almería, in the autonomous region of Andalusia), in which Moroccan workers residing in the region were attacked and beaten. The communication states that most of these workers are employed in the agricultural sector, working in greenhouses where the temperature may reach up to 50 degrees Celsius and where their exposure to pesticides leaves them with pulmonary and skin diseases. In general, the Moroccan workers in this region are neither insured nor do they have work papers, and they can be found residing in ghettos, living in makeshift cardboard or plastic shelters. The injuries suffered by this group of workers and their living and working conditions as described in the CDT's comments, as well as the Government's reply to those comments, are set forth in detail in the Committee's comments on the Migration for Employment Convention (Revised), 1949 (No. 97).

4. The Committee notes that, following the events that took place in El Ejido, representatives of immigrant associations, employers' and workers' organizations signed an Agreement on 12 February 2000, according to which the central Government, the autonomous government of Andalusia, and the employers' and workers' organizations undertook to take certain steps to, among other things, re-house and compensate the workers injured due to the events described, launch a programme for the construction of low-cost housing, regularize those workers that were undeclared and without working papers, establish information centres to provide assistance to foreign workers, develop intercultural programmes designed to promote the social integration of the immigrants, and create a permanent committee, composed of the parties to the Agreement, to monitor the execution of the measures agreed upon.

5. In its reply to the CDT communication, the Government indicates that, at a meeting on 10 April 2000, the permanent committee found that the Agreement had been complied with overall, although it acknowledged that certain measures still remained to be implemented. Thus, the committee was dissolved by consensus, and the Board for the Social Integration of Immigrants in Almería was charged with the task of ensuring that those steps still not implemented were in fact carried out. The Government lists the measures taken in compliance with the Agreement, including finding housing for those workers whose housing was destroyed, payment of compensation for damages sustained, the regularization of most of the migrant workers from Morocco or elsewhere, the effective application of the collective agreement for the agricultural sector, and the investigation by the authorities of the events that took place in El Ejido.

6. The Committee expresses its concern with regard to the events described. It considers that these events, to the extent that they have an impact on employment and occupation opportunities and conditions of work, involve acts of discrimination on the basis of race, colour, religion and national extraction as covered by the Convention. The Committee recalls that appropriate national legislation that is in conformity with the Convention is a necessary, but not sufficient condition for the effective application of the principles of the Convention. Recalling furthermore that the prohibition of discrimination is not enough to eliminate it in practice, the Committee notes that the effective struggle against discrimination in employment and occupation may take the form of measures such as affirmative action programmes, public awareness-raising campaigns, the establishment of relevant institutional bodies with promotional, advisory or monitoring functions and, in accordance with *Article 2 of the Convention*, the formulation of a national policy declared and applied with the aim of eliminating discrimination based on all of the grounds prohibited by the Convention. The Committee

requests the Government to supply information on all measures adopted to guarantee equality of opportunity and treatment to workers of foreign extraction, including Moroccans, in respect of access to employment and occupation, vocational training and conditions of employment, as well as to promote the practical application of the principle of non-discrimination. The Government is also requested to supply information on all measures taken to raise public awareness of the problem of discrimination on the basis of race, colour, religion and national extraction and to promote the integration of Moroccan workers and workers of other minorities and ethnic groups in Spanish society and economic life.

Sudan (ratification: 1970)

The Committee notes the Government's two very brief reports and the fact that the armed conflict in the South of Sudan is an obstacle to the full application of the Convention.

1. The Committee refers to its previous comment, in which it noted the adoption of a new Constitution, which prohibits discrimination on grounds of race, sex and religion, and in which it drew the Government's attention to the absence of any formal prohibition of any form of discrimination on the grounds of political opinion, national extraction, colour and social origin. It also noted the adoption of a number of other legislative texts, including the new Labour Code, which does not contain provisions respecting non-discrimination in employment and occupation. The Committee is bound once again to recall that, where provisions are adopted to give effect to the principle set forth in the Convention, they should prohibit all the forms of discrimination covered by *Article 1, paragraph 1(a), of the Convention*. It therefore requests the Government to provide information on the specific measures which have been taken or are envisaged to set out in law protection against discrimination on the grounds which are formally prohibited by the Convention, but are not laid down in the Constitution.

2. The Committee notes the Government's statement that any person who considers that his/her constitutional rights have been violated, including in the fields of employment and occupation, has the right to appeal to the Constitutional Court. The Government also states that the new Labour Code does not establish any distinction based on the sex of the worker. The Committee wishes to recall in this respect that, while the establishment in the Constitution of the principle of equality of opportunity and treatment and the judicial protection of victims of discrimination represents an important stage in the implementation of the above principle, they cannot on their own constitute a national policy within the meaning of *Article 2* of the Convention. The implementation of a policy of equality of opportunity and treatment also presupposes the adoption of specific measures designed to correct inequalities observed in practice. Indeed, the promotion of equality of opportunity and treatment in employment and occupation as advocated by the Convention is not aimed at a stable situation which can be definitively attained, but at a permanent process in the course of which the national equality policy must continually be adjusted to the changes that it brings about in society. While the Convention leaves it to each country to intervene according to the methods which appear to be the most adequate, taking into account national circumstances and customs, the effective application of the national policy of equality of opportunity and treatment requires the implementation by the State concerned of appropriate measures, the

underlying principles of which are enumerated in *Article 3* of the Convention. It is therefore important to emphasize the interdependence of these two means of action, consisting of the adoption of legal provisions and the preparation and implementation of programmes to promote equality and correct de facto inequalities which may exist in training, employment and conditions of work. The Committee requests the Government to take the necessary measures, as set out among other provisions in *Article 3(a), (b), (c), (d) and (e)* of the Convention, with a view to guaranteeing the effective application of the principle of non-discrimination in relation to equality of opportunity and treatment.

3. The Committee recalls that, under the terms of the Public Order Act of 1996, Muslim women are liable to be beaten or whipped if their dress is deemed to be indecent or if they go out in the street after nightfall, which considerably restricts their freedom of movement. Since these restrictions are not without impact on the training and employment of women, the Committee once again requests information on the measures which have been taken or are envisaged to ensure equality of access for men and women to jobs of their own choosing. In this respect, it trusts that in its next report the Government will finally provide a copy of the instructions on the dress code of what women must wear in public places, including at their workplace.

4. The Committee also requests the Government to indicate in its next report the measures which have been taken for the active promotion of equality of opportunity and treatment in vocational training and employment for all categories of workers, and particularly those who are most vulnerable in view of their social status, such as women and certain ethnic minorities (for example, the Nuba in central Sudan) and other marginalized social groups.

5. In a request addressed directly to the Government, the Committee is raising other matters concerning: jobs and occupations which are prohibited for women and the need for a woman to obtain the authorization of her husband or guardian to be able to travel abroad. The Committee trusts that the Government will provide detailed information on these matters in its next report.

Sweden (ratification: 1966)

1. The Committee notes with interest the adoption of two new anti-discrimination laws on 1 May 1999 prohibiting discrimination in the workplace on the grounds of functional impairment (Act No. 1999:132) and sexual orientation (Act No. 1999:133). It also notes with interest the adoption on 1 May 1999 of Act No. 1999:130 on Action against Ethnic Discrimination at Work. It notes that the Act prohibits direct and indirect discrimination, covers all aspects of the employment relationship including recruitment, and requires the employer to take active measures to prevent ethnic discrimination. The Committee also notes that the Act establishes that there shall be an Ombudsman against Ethnic Discrimination (DO) and the Anti-Discrimination Commission which are to be responsible for monitoring the application of the Act.

2. The Committee is raising other points in a request addressed directly to the Government.

Turkey (ratification: 1967)

1. The Committee notes the Government's report, as well as the attached comments of the Confederation of Turkish Employers' Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ).

2. The TISK states that there has been a marked increase in the employment of women in the private sector, citing the Labour World Statistics issued by the Ministry of Labour and Social Security, copies of which were not received by the Office. The Committee notes, however, that the statistical information supplied by the Government in its report points to a decrease in the employment of women overall (from 34 per cent in 1990 to 27.9 per cent in 1998), with the rate of employment for urban women being even lower (10 per cent). Based upon the information contained in the report relative to the situation of women in education and employment, the Committee notes the extremely low level of education among women. The data provided indicate that, as of October 1998, almost four times as many women as men were illiterate. The Committee points out that, if parts of the population are not given the opportunity to attain the same level of education as others, these discrepancies will continue to extend to employment opportunities.

3. *Discrimination on the basis of sex and religion.* In a communication dated 9 May 1999, the Workers' House of the Islamic Republic of Iran, a workers' organization, alleged that the Government of Turkey had failed to observe the Convention, referring to discrimination on the basis of sex, religion and political opinion. The Workers' House stated that a female legislator from the Pro-Islamic Virtue Party was treated in a discriminatory manner on these bases when she arrived for her swearing-in ceremony at the Grand National Assembly wearing a headscarf in the Islamic manner and that, as a result of protests from other legislators, she was forced to leave the hall without being sworn in. The Workers' House also refers to a ban on the wearing of headscarves at universities, academic centres and by public servants as constituting discrimination in employment in violation of the Convention.

4. In response to the Government's request for clarification regarding the applicability of the Convention to Members of Parliament or legislators, the Committee refers the Government to paragraph 79 of its 1996 Special Survey on equality in employment and occupation, which discusses the meaning of the terms "occupation", "persons in employment" and "work" and makes it clear that the scope of the Convention is very broad, extending to all sectors of activity and covering employment in both public and private sectors (see also 1988 General Survey on equality in employment and occupation, paragraph 86, citing ILO: Discrimination in the Field of Employment and Occupation, Report IV(1), International Labour Conference (42nd Session, 1958), appendix). The Committee also notes that, pursuant to *Article 3(d) of the Convention*, ratifying States undertake, by methods appropriate to national conditions and practice, to pursue a national policy of equality of opportunity and treatment in respect of employment under the direct control of a national authority.

5. The Government acknowledges in its report that the female legislator's entrance into the general assembly hall in a headscarf gave rise to protests from certain Members of Parliament. The Government makes reference to the dress code for female and male legislators which requires female legislators to wear a jacket and skirt within the Hall, but states that the practice of wearing a headscarf does not prevent women from being

elected to the position of legislator. In this context, the Government's report refers to another female legislator who was sworn in without incident on the same day, who apparently was not wearing a headscarf, although she is known to wear one in her daily life. Noting that the dress code does not appear to preclude expressly the wearing of headscarves by female legislators, the Committee requests the Government to supply a copy of section 56 of the Standing Orders of the Turkish Grand National Assembly.

6. The Committee notes that the Turkish Constitution provides that Turkey is a democratic, secular and social State, establishes the principle of secularism in regard to State affairs and politics, and provides for freedom from religious discrimination. In the context of the Workers' House communication, the Committee recalls that religious considerations as the basis of distinctions in social and occupational life may vary in nature (see paragraph 41 of its 1996 Special Survey on equality in employment and occupation). The possibility of discrimination also often arises from the absence of religious belief or from belief in different ethical principles, from a lack of religious freedom or from intolerance, in particular where one religion has been established as the religion of the State, where the State is officially anti-religious, or where the dominant political doctrine is hostile to all religions (*ibid.*). The Convention's aim is to provide protection against discrimination on the basis of religion affecting employment and occupation, which often results from a lack of religious freedom or from intolerance and which may arise in a number of situations. In some cases, discrimination may arise from an attitude of intolerance towards persons who profess a particular religion or particular religious beliefs. The free exercise of a religious practice may in certain circumstances be hindered by the constraints of an employment or occupation, notably in cases where the exercise of a religion requires a particular kind of clothing (see 1988 General Survey, paragraph 47). In this regard, the Committee points out that the protection afforded by the Convention, with regard to equality of opportunity and treatment without discrimination on the basis of religion would be void of substance, if it did not include at least the most important aspects of religious practice (see 1988 General Survey, paragraph 51).

7. The Government's report indicates, as do the Workers' House comments, that public servants and students are required to uncover their heads while on duty or inside schools. This requirement would affect those persons – predominately women – who cover their heads in the exercise of a religious practice. The Committee points out that apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics could result in indirect discrimination on the grounds covered in *Article 1(1)(a)* of the Convention. Indirect discrimination can be said to occur when the same condition, treatment or criterion is applied to all persons, but its application results in a disproportionately harsh impact on some persons on the basis of characteristics such as sex or religion, and is not closely related to the inherent requirements of the job (see 1996 Special Survey on equality in employment and occupation, paragraphs 25 and 26). The requirement that public servants and students uncover their heads would in fact disproportionately affect Muslim women, possibly impairing or precluding altogether their right to equal access to education and employment under the Convention due to their religious practices.

8. The potential discriminatory effect of the ban on headscarves takes on particular significance when viewed in the light of information supplied by the Government indicating that women's level of education is very low in Turkey (one out of every two

women jobseekers has only a primary school education), as is their level of participation in the work force. While the Committee has on other occasions expressed its concern over the impact of dress code requirements imposing the wearing of headscarves or other particular kinds of dress on all female public servants, it is equally concerned by the existence of requirements that prohibit anyone from dressing in accordance with their religious requirements, particularly when the wearing of headscarves, for example, would not in any way impair their ability to perform the tasks required in a specific job or occupation. In this regard, the Committee requests the Government to supply a copy of the regulations referred to in the report and to indicate any measures taken or contemplated to ensure that the regulations in question do not affect the right of Muslim women to pursue public sector employment or educational opportunities. The Committee also requests the Government to provide copies of the judgments issued by the Supreme Court of Appeals and Council of State (Supreme Administrative Court) to which reference is made in the Government's report. The Committee also points to the need to promote respect, tolerance, understanding and acceptance among the various religious and ethnic groups as part of any policy to promote equal opportunity and treatment in employment. It requests the Government to indicate any measures it has taken to raise public awareness in this regard.

9. *Position of public servants dismissed or transferred during the period of martial law, 1980-87.* The Committee refers to its previous comments concerning the reinstatement of victims of discrimination based on political grounds under Martial Law Act No. 1402. Further to its previous observation requesting information on the reasons why 753 of the transferred civil servants and 202 of the transferred public employees who had applied for reinstatement had not been returned to their posts, the Committee notes the Government's statement that those who were not reinstated either did not apply or no longer met the requirements of the job due to prison sentences handed down under the Penal Code. The Committee asks the Government to supply detailed information on the percentage of the 955 transferred employees that were not reinstated due to the imposition of prison sentences, indicating for each such employee the nature of the criminal charges brought and the penalties imposed. In respect of the reinstatement of military and civilian members of the armed forces and civilian members of the security forces under Act No. 4045, the Committee notes the Government's statement that 148 personnel were reinstated to equivalent positions in other public institutions.

10. *Amendments to Martial Law Act No. 1402.* The Government's report contains no reply to the Committee's previous comments concerning the need to repeal or amend section 3(d) of Martial Law Act No. 1402, which vests martial law commanders with broad powers to dismiss workers and public servants or transfer them to other areas, a discretionary power which in the Committee's view could lead to discrimination in employment on the basis of political opinion in contravention of the Convention. TÜRK-İŞ states that section 3(d) of Act No. 1402 continues to vest martial law commanders with discretionary authority to dismiss workers and public servants and send them to another region without any court ruling and without providing for the right to appeal established in *Article 4* of the Convention. The Committee repeats its request that the Government provide statistical information on the number of appeals arising out of the application of section 3(d) of Act No. 1402 and their outcomes.

11. *Measures under the 1990 Security Investigation Regulations.* The Committee recalls its previous comments on the manner in which the Government is ensuring that

the 1990 Regulations, which are very broad in definition and scope, are not being applied so as to prohibit employment in violation of the Convention. The Committee notes from the report that the provisions of the 1990 Regulations that do not conflict with the provisions of Act No. 4045 are still applicable and that the General Directorate of Security continues to carry out security investigations in accordance with both Act No. 4045 and those provisions of the 1990 Regulations that are in conformity with the Act. Recalling that, according to provisional section 7 of Act No. 4045, implementing regulations were to be adopted within six months of the entry into force of the Act on 2 November 1994, the Committee asks the Government to continue to provide information on the status of the enactment of the implementing regulations. The Committee further requests the Government to indicate the provisions of the 1990 Regulations that are applied by the General Directorate of Security in the course of security investigations as well as detailed information on the manner in which the provisions are applied in practice.

12. *The 1991 Anti-Terrorism Act.* Referring to its earlier comments concerning section 1 of the Anti-Terrorism Act, which defines acts of terrorism and imposes a sentence of imprisonment for such acts, the Committee notes the Government's statement that section 1 limits the definition of terrorism to violent acts. The Committee notes that section 1 defines terrorism to include all acts instigated by one or more persons belonging to an organization aiming to change the characteristics and political, legal, social, secular or economic order of the country. In this connection, the United Nations Commission on Human Rights noted that several journalists have been convicted under the Anti-Terrorism Act for expressing their opinions and for reporting on sensitive matters, such as the so-called Kurdish question (E/CN.4/1999/62/Add.2, 28 December 1998, paragraph 8). The Committee once again draws the Government's attention to paragraph 45 of its 1996 Special Survey on equality in employment and occupation, which states that the protection afforded by the Convention against discrimination in employment and occupation extends to activities expressing or demonstrating opposition to the established political principles, or simply a different opinion. The protection of political opinion does not apply where violent methods are used to express those opinions. The Committee therefore once again asks the Government to consider restricting the scope of section 1 of the Act to ensure that persons are not deprived of their employment or occupation pursuant to the Act on the grounds of their political opinion.

13. In respect of section 8 of the Anti-Terrorism Act (which contains a very broad definition of propaganda, carrying a sentence of imprisonment), the Committee notes that a new Bill to amend this provision was submitted to the Turkish Grand National Assembly, but that it has not yet been enacted. The Committee would be grateful if the Government would continue to keep it informed of the status of the Bill, and supply a copy once it is adopted. It would also appreciate receiving copies of any judicial or administrative decisions interpreting and applying sections 1 or 8 of the Act.

14. *Non-discrimination on other grounds.* The Committee notes the Government's statement that all Turkish citizens are equal before the law regardless of language, race, colour, sex, political opinion, philosophical beliefs, religion, ethnic origin or other affiliations. The Committee recalls its previous direct request for information on the grounds of discrimination on the basis of race, national extraction and colour under *Article 1(1)(a)* of the Convention, and notes that the Government's report

does not respond to the Committee's request for information on measures taken to promote equality of opportunity and treatment for minority groups such as the Kurds. It therefore repeats its request for concrete information on any measures taken to secure application of the principles of the Convention with regard to Turkish minority groups, including the Kurdish minority.

15. The Committee is addressing a request directly to the Government on other points.

Uruguay (ratification: 1989)

The Committee notes the Government's report and the lengthy comments submitted by the Inter-Trade Union Assembly-Workers' National Convention (PIT-CNT).

1. *Discrimination on the basis of sex.* In its earlier observations the Committee noted the observations presented by the Association of Employees of the National Board of Electrical Power Stations and Distribution (AUTE) – Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) concerning discrimination on the basis of sex which took place in the National Board of Electrical Power Stations and Distribution (AUTE). It was alleged that, because special social security standards were applied to women, women workers received smaller amounts than men when they collected voluntary redundancy benefits. The Committee recalled the wide scope of *Article 1(a) of the Convention* and of Paragraph 2(b)(iv) of Recommendation No. 111 and requested the Government to inform it of the final results of the proceedings initiated by the labour inspectorate in this case. In this connection, the Committee takes note of the decision of the labour inspectorate of 15 August 1997, attached to the Government's report.

2. This decision contains an analysis of the allegations by the parties and the opinions of other bodies consulted. The Retirement Incentive Plan (hereinafter referred to as "the Plan") impugned by the representatives of the women workers, approved by Directorate decision of 10 September 1996, distinguishes between two categories of employees covered by the normal retirement system: (a) employees between 55 and 59 years of age, who would receive an incentive equivalent to 12 wages; and (b) employees who would receive, on reaching 60 years of age, an incentive equivalent to 18 wages. Although the Plan makes no reference to gender, the age band of 55 to 59, which receives an incentive of six months less, refers to women, since at the time that the situation arose only men could retire at 60 years of age under the ordinary scheme. The Committee notes that the decision of the labour inspectorate reveals that no one could have been unaware that, under the retirement scheme in force at the time of the Plan, a woman of 55 years of age was in an identical situation legally, for the purposes of the Plan, as a man of 60 years of age, and that therefore their retirement incentives must be equal.

3. The Committee notes with interest that in the above decision, the Labour Inspectorate urges the UTE Directorate "within the limits possible to it" to allow 18 months' wages incentives to women public servants disadvantaged by the Plan in question. However, it notes that the phrase "within the limits possible to it" leaves doubts as to the obligatory nature of the order and as to the degree to which it may have been respected. The Committee recalls that where identical conditions, treatment or

criteria apply to all, but their consequences seriously disfavour certain workers because of their race, colour, sex or religion, and such conditions have no direct connection with the requirements of the employment, it amounts to indirect discrimination. Please indicate whether all the women disfavoured by the indirect discrimination arising from the Plan have received the corresponding 18 months' wage incentives, and if measures have been adopted to ensure the conferring of such benefits does not disproportionately disadvantage women as compared to men.

4. *Remedial procedures.* In its comments on the Government's report, PIT-CNT indicates that, in addition to the demands referred to above, the union had filed a legal request based on Act No. 16045, which prohibits any discrimination in breach of the principle of equality of treatment and opportunity for both sexes. To this end, the union had recourse to the special, shortened procedure provided for under the abovementioned law. The law courts (of the first and second instance) ruled that this procedure had been abolished by the general standards provided for under the General Code of Legal Proceedings. The union holds that, should this criterion become generalized action taken in respect of labour discrimination on the basis of Act No. 16045 would follow an ordinary procedure, the duration of which could last three years, and the rapidity provided for under the abovementioned Act would be completely lost. The union suggests that the procedure for habeas corpus be adopted. The Committee has been unable to examine the judgement, since although the Government indicates that it has included a copy of the judgement of the Labour Appeal Court (Judgement No. 375 of 11/12/97), it has not been received. It requests a copy of the judgement and, recalling that the institution of accelerated procedures, which are inexpensive and easily accessible, is an important element in the application of the policy to promote equality of opportunity and treatment in employment and occupation (paragraphs 216-230 of the General Survey on equality in employment and occupation, 1988), it hopes the Government will provide information on current legal remedies, and in particular on the procedure of application of Act No. 16045, as well as possible access to accelerated procedures in this field.

5. The Committee notes that PIT-CNT, in its comments on the application of the Convention, stresses that the Government should supply information on the practical application of the Convention, given that women are discriminated against in respect of recruitment, promotion, remuneration and training due to labour market segregation. The workers' organization also points to racial discrimination. The Committee requests the Government to supply more detailed information, including statistics, on the present situation and on the efforts made to tackle discrimination on the basis of sex and racial discrimination in training, employment and occupation. The Committee will examine the specific questions raised in this paragraph in a direct request.

6. In addition, a request regarding other points is being addressed directly to the Government.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Angola, Antigua and Barbuda, Australia, Austria, Barbados, Belgium, Bolivia, Bulgaria, Burundi, Cameroon, Canada, Cape Verde, Central African Republic, Chile, Cote d'Ivoire, Denmark, Dominica, Egypt, Finland, France, Gabon, Ghana, Greece, Guinea, Guinea-Bissau, Guyana, Haiti, India, Israel, Jamaica, Kuwait,*

Lebanon, Lesotho, Madagascar, Malawi, Malta, Mongolia, Niger, Norway, Poland, Qatar, Russian Federation, Saint Lucia, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Sierra Leone, Slovakia, Slovenia, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Uruguay, Yemen.

Convention No. 112: Minimum Age (Fishermen), 1959

Liberia (ratification: 1960)

Further to its previous comments, the Committee notes that under section 291 of the Liberian Maritime Law – Title II of the Liberian Code of Laws – a vessel means any vessel registered under Title II and a fishing vessel means a vessel used for catching fish, whales, seals, walrus and other living creatures at sea. Under section 326(1) of the Maritime Law the minimum age for admission to employment or work on Liberian vessels is 15 years.

The Committee notes that vessels eligible to be documented include by virtue of section 51 of the Maritime Law, inter alia, vessels of 20 net tons and over engaged in coastwise trade between ports of Liberia or between those of Liberia and other West African nations; and seagoing vessels of more than 1,600 tons engaged in foreign trade. The Committee recalls in this connection that the Convention applies to fishing vessels which under the terms of *Article 1 of the Convention* include all ships and boats, of any nature whatsoever, whether publicly or privately owned which are engaged in maritime fishing in salt waters. The Committee hopes that the Government will provide information on measures taken or envisaged to apply the Convention to all fishing vessels coming under the purview of *Article 1* of the Convention.

Convention No. 113: Medical Examination (Fishermen), 1959

Requests regarding certain points are being addressed directly to the following States: *Croatia, Slovenia.*

Convention No. 114: Fishermen's Articles of Agreement, 1959

Cyprus (ratification: 1966)

In comments made over several years the Committee has asked the Government to provide information on the measures taken with a view to the adoption of legislation on articles of agreement giving effect to the provisions of the Convention. The Committee notes the Government's indication in its report of November 2000 that the Department of Merchant Shipping of the Ministry of Communications and Works of Cyprus has completed the preparation of the ship's articles as well as the relevant regulations and that they are in the process of being approved by the Council of Ministers. Recalling also the large number of fishing vessels registered in Cyprus that belong to foreign owners as well as the large number of non-Cypriot fishermen employed therein, the Committee hopes that these legal provisions and regulations will be adopted in the near future and that the Government will report on all the measures taken to give full effect to the provisions of the Convention.

[The Government is asked to report in detail in 2002.]

Liberia (ratification: 1960)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the Government's indication that the Committee's comments have been submitted to the Commissioner of the Bureau of Maritime Affairs for immediate action. Referring to its previous comments the Committee requests the Government to provide information on any reaction by the Commissioner. It also urges the Government to provide full information on each of the provisions of the Convention and each question in the report form approved by the Governing Body.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Guatemala, Mauritania*.

Convention No. 115: Radiation Protection, 1960

Brazil (ratification: 1966)

The Committee notes the information supplied by the Government in its report on the action taken during the period 1996-97 in relation to the development of legislation on radiation protection in Brazil. It notes, however, that the Government's report contains no reply to the previous comments. It must therefore repeat its previous observation which reads as follows:

The Committee notes the information supplied by the Government in its reports for 1995 and 1996.

1. *Articles 3, paragraph 1, and 6, paragraph 2, of the Convention.* In its previous observation the Committee noted that the Coordinating Committee for Protection concerning the Brazilian Nuclear Programme (COPRON) had been sent a proposal for amending the legislation in the light of the 1990 Recommendations of the International Commission on Radiological Protection (ICRP). The Committee notes that, in a report received in 1995, the Government stated that COPRON would meet shortly to begin work, on a tripartite basis, on a review of the maximum doses currently authorized. The Committee asks the Government to provide information on the stage reached in the work of COPRON and progress made. More generally, the Committee notes that, according to the information supplied by the Government in its 1996 report, the examination of the Basic International Safety Standards jointly sponsored in 1994 by the IAEA, the WHO, the ILO and three other international organizations, is currently under way. The Government also indicates that it intends to apply these standards in the near future. The Committee therefore hopes that the Government will shortly be able to report the adoption of measures to ensure effective protection of workers and particularly of revised maximum permissible doses that conform to the 1990 Recommendations of the ICRP and the 1994 International Basic Safety Standards.

2. With regard to working conditions in the nuclear industry, on which the National Commission of Workers in Nuclear Energy (CONTREN) had commented, the Committee notes the Government's statement that the studies now under way concern three areas:

nuclear installations – particularly temporary work performed in such installations – the storage of radioactive waste and the hospital sector. The Committee again asks the Government to provide information on the data collected in the course of the coordinated action undertaken with the social partners to assess the situation in the nuclear industry and the changes that need to be made. It also asks the Government to indicate whether the collective agreements revising working conditions, which the Government referred to in its previous reports, have been adopted and, if so, to send copies to the Office.

3. The Committee is addressing a request directly to the Government in which it again raises a number of points.

Ecuador (ratification: 1970)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the information supplied by the Government in its reports of October 1994 and 1996. It also notes the observations made by the Central Ecuatoriana de Organizaciones Clasistas (Ecuadorian Central of Class Organizations) to the effect that provisions on radiation protection should be updated in the light of new knowledge. The Committee notes in this respect the Government's indications that new regulations on radiation safety have been prepared with employers' and workers' representatives. The Committee hopes that the Government will soon report the provisions which have been adopted and are applicable to all activities involving exposure of workers to ionizing radiations in the course of their work and in accordance with the dose limits mentioned in its general observation of 1992, in the light of current knowledge, such as that contained in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) and the Basic Safety Standards for Protection Against Ionizing Radiation and for the Safety of Radiation Sources of 1994, developed under the auspices of the IAEA, ILO and WHO, and three other international organizations, which are based on the ICRP Recommendations.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Finland (ratification: 1978)

1. The Committee notes the information supplied by the Government in its report. The Committee notes with satisfaction the amendments made to the Finnish radiation legislation in 1999, in particular the Radiation Act (592/1991) and the Radiation Decree (1512/1991), in the light of the European directive EURATOM 96/29 of 13 May 1996 which respond to the previous comments of the Committee concerning *Article 7, paragraph 2, and Article 13 of the Convention*, as well as to the question concerning the protection of contracted-out workers, meaning workers who participate in radiation work without being employees of the enterprise.

2. The Committee is raising certain questions in a request addressed directly to the Government.

France (ratification: 1971)

The Committee notes that the Government's report contains no reply to previous comments. It hopes that the next report will include full information on the matters raised in its previous direct request, which reads as follows:

1. *Review of maximum permissible doses and effective protection of workers in the light of new knowledge (Articles 3, paragraph 1, and 6, paragraph 2, of the Convention).* The Committee notes that the Government indicates that by the year 2000 the maximum permissible dose of exposure of workers to ionizing radiation currently in force will be replaced by a new limit of 100 mSv over five consecutive years, in accordance with the prescriptions of Directive 96/29/Euratom, adopted in May 1996. With reference to its previous observation and its 1992 general observation, the Committee recalls that the International Commission on Radiological Protection (ICRP), in recommendations formulated in 1990, sets a limit of 20 mSv per annum averaged over five years provided that the actual dose does not exceed 50 mSv in any one year. Moreover, in 1994 the limits established by the ICRP were incorporated in the International Basic Safety Standards. The Committee hopes that the Government will soon be in a position to report the adoption of provisions in conformity with the dose limits mentioned in its 1992 general observation, in the light of current knowledge such as that contained in the 1990 ICRP Recommendations and the 1994 International Basic Safety Standards.

2. The Committee is raising certain questions in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ghana (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

With reference to its previous comments, the Committee notes the Government's indication in its latest report that the issue raised by the Committee has been given consideration and the appropriate response is being prepared.

The Committee recalls that its previous observations read as follows:

1. In comments it has been making for over 15 years, the Committee has noted that protection against hazards due to radiation has only been provided by means of the non-binding Code of Practice for the Protection of Persons Exposed to Ionizing Radiations; the Committee had also taken note of the Government's indication that a Radiation Bill was being prepared in order to give legal effect to the Code of Practice. In its 1989 observation, the Committee noted the Government's indication that the Radiation Bill had still not been adopted, but that it would be given prompt attention upon the re-establishment of the National Advisory Committee on Labour. The Committee notes from the Government's report, received in 1991, that there has been no change in the application of the Convention.

The Committee would call the Government's attention to its general observation under this Convention which sets forth the revised system of radiological protection adopted by the International Commission on Radiological Protection on the basis of new physiological findings in its 1990 Recommendations (Publication No. 60). The Committee would recall that, under *Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention*, all appropriate steps shall be taken to ensure effective protection of workers against ionizing radiations and to review maximum permissible doses of ionizing radiations in the light of current knowledge. The Government is requested to indicate the steps taken or being considered in relation to the matters raised in the conclusions to the general observation, in particular as regards bringing the Radiation Bill under preparation into conformity with the present state of knowledge.

The Committee hopes that the Radiation Bill with any necessary amendments will soon be adopted and that it also will ensure the application of the following provisions of the

Convention which are not covered by the Code of Practice: *Article 9, paragraph 2* (instructions to be given to workers as to the precautions to be taken for their health and safety when working with ionizing radiations); *Article 13(a), (b) and (d)* (circumstances under which, due to the nature and/or degree of exposure, workers shall undergo appropriate medical examinations, employers shall notify the competent authority and shall take any necessary remedial action on the basis of the technical findings and the medical advice); and *Article 14* (to ensure that no worker is employed or continues to be employed in work involving exposure to ionizing radiations contrary to qualified medical advice). The Government is requested to indicate the progress made in these respects.

II. The Government is requested to provide information concerning the methods by which application of the Code of Practice is presently supervised and enforced, as requested under *Part III of the report form*, as well as any relevant extracts from official reports concerning the practical application of the Convention, as called for under *Part IV of the report form*.

The Committee hopes that the Government will make every effort to take the necessary action in the near future.

Greece (ratification: 1982)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the information supplied by the Government in its latest report.

1. *Article 8 of the Convention*. The Committee notes that section 1.3.4 of the Ministerial Decision No. 14632 (FOR) 1416/1989 requiring the immediate implementation of European Directives which set up lower dose limits. In this event, the Greek Nuclear Energy Committee is obliged to adopt new dose limits being the basis for a ministerial decision to be taken in order to translate the dose limits contained in the European Directives into national law. In this regard, the Committee notes the EU Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation. Article 9 of this Directive fixes dose limits for workers exposed to ionizing radiation and its article 13 sets dose limits for the general public which are both in line with the dose limits recommended by the ICRP in 1990. The Committee, however, notes that the Council Directive 96/29/EURATOM does not contain any provisions prescribing dose limits for non-radiation workers, and thus the national legislation is lacking provisions fixing the annual dose limit for workers not directly engaged in radiation work. The Committee recalls the provision of *Article 8* of the Convention obliging the Government to fix appropriate levels of exposure in the light of knowledge available at the time for the group of workers not directly engaged in radiation work. In this respect, the Committee draws the Government's attention to section 5.4.5 of the ILO Code of Practice of 1986, according to which the dose limit for workers not directly engaged in radiation work should be the same as the dose limit fixed for individual members of the public. For this category of persons, the 1990 ICRP recommendation set up a dose limit of 1 mSv/year, averaged over five years. The Committee accordingly hopes that the Government will take the necessary measures in the near future in order to fulfil its obligation under this Article of the Convention.

2. The Committee is raising other points in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sri Lanka (ratification: 1986)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the information supplied by the Government in its report on the application of the Convention and the observations forwarded by the Ceylon Workers' Congress.

In previous comments the Committee noted that the Atomic Energy Authority had drafted new regulations incorporating the 1990 recommendations of the International Commission on Radiological Protection (ICRP).

The Committee notes the Government's indication in its report that dose limits for radiation workers and the general public as recommended by the ICRP will be put into effect after the new regulations are approved by the Ministry of Science, Technology and Human Resources Development and by Parliament. It also notes the indication by the Ceylon Workers' Congress that by 1 August 1994, the draft amendments proposed by the Atomic Energy Authority were still with the legal draftsmen and further action to present them to the legislature could only be taken when they were received back at the Atomic Energy Authority, and that the Chairman, AEA, indicated that the comments made by the Committee of Experts in respect of *Articles 1, 7, 12, 13(a), 13(c) and 14* had been taken into consideration.

The Committee hopes that new regulations ensuring the full application of the Convention will be adopted in the near future, and that the Government will soon be in a position to supply the text of the provisions adopted. It again addresses a direct request to the Government on certain points.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belize, Brazil, Djibouti, Ecuador, Egypt, Finland, France, Greece, Netherlands, Norway, Poland, Slovakia, Sri Lanka, Switzerland, Tajikistan, Turkey.*

Convention No. 117: Social Policy (Basic Aims and Standards), 1962

Requests regarding certain points are being addressed directly to the following States: *Bolivia, Democratic Republic of the Congo, Malta, Niger.*

Convention No. 118: Equality of Treatment (Social Security), 1962*Brazil (ratification: 1969)*

The Committee notes the information provided by the Government in reply to its previous comments.

Article 5 of the Convention (in relation to Article 10, paragraph 1). With reference to its previous comments concerning the need to incorporate into the national legislation a provision guaranteeing the payment of long-term benefits in the event of residence abroad, the Committee notes the information and legislative texts provided in the Government's reports received in 1998 and 1999.

The Committee recalls that, contrary to this Article of the Convention, section 109 of Act No. 8213 of 24 July 1991 respecting social insurance provides that, in the event of the residence of the beneficiary abroad, benefits shall be paid to a substitute whose power of proxy shall be renewed every six months. However, section 203 of the Regulations on social insurance benefits, approved by Decree No. 2172 of 1997, states that the benefit due to a beneficiary who is resident abroad shall be provided under the terms of the agreement concluded between Brazil and the country of residence of the beneficiary in question or, in the absence of such an agreement, in accordance with the instructions issued by the Ministry of Insurance and Social Assistance (MPAS). The Committee also recalls that of the 38 countries, including Brazil, which have ratified Convention No. 118, Brazil has only concluded bilateral social security agreements with Cape Verde, Italy and Uruguay. In the absence of such agreements with other countries which have ratified the Convention, the social security benefits due from Brazil to beneficiaries residing in these countries can only be paid if appropriate instructions are adopted by the MPAS. In the absence of such instructions, benefits will continue to be paid to a substitute in Brazil. In this context, the Committee had requested the Government to indicate whether instructions have in fact been adopted by MPAS concerning the payment of benefits abroad and, if not, to indicate the measures which have been taken or are envisaged to give full effect to *Article 5* of the Convention in both law and practice.

In its reply, the Government states that the MPAS, which is the authority responsible for policy relating to the general social security scheme and bilateral agreements concluded by Brazil, is continuing to endeavour to implement all the provisions of Convention No. 118. For some time, the system for implementing social security has been undergoing decentralization and development, not only with regard to the services provided to beneficiaries, by supplying them with information on the agreements which are in force, but also with a view to strengthening collaboration with liaison bodies in contracting parties. Six of the federated states of Brazil now have their own liaison bodies with contracting States with a view to promoting and accelerating the application of bilateral agreements. Negotiations concerning bilateral agreements are continuing with Austria, Canada, Guatemala and the United States. Furthermore, although the Brazilian social insurance scheme does not currently have a system for the direct payment of benefits to beneficiaries residing abroad, the Government indicates that the discussions between the MPAS, the financial services of the National Social Insurance Institute (INAS) and the Bank of Brazil have reached an advanced stage with a view to modifying the current contract between the social insurance system and the bank so that benefits due to beneficiaries residing abroad, whether or not they are provided under the terms of international agreements, can be paid directly to them from 1999, with priority being given to payments for insured persons living in Italy, Uruguay and Argentina. Furthermore, in 1999, the MPAS required the National Social Insurance Institute, which is the liaison body for international agreements, and DATAPREV, the enterprise entrusted with processing the statistical data concerning social insurance, to compile reliable statistics on the level of benefits paid to beneficiaries resident abroad, whether or not an agreement had been signed with their country of residence. The Government will supply these data to the ILO as soon as they are available.

The Committee notes this information with interest. However, it notes that, with regard to the legal situation, the Government states that no amendment has been made to

the legislation respecting the general social security scheme in relation to equality of treatment, as envisaged in Convention No. 118. Section 109 of Act No. 8213 applies to Brazilian nationals and foreign nationals covered by the general social security scheme who are resident in a country which has not concluded a social security agreement with Brazil, or a country which has concluded a bilateral agreement with Brazil but this agreement does not provide for the direct payment of benefits to the beneficiary, or through the competent institution in the other contracting State (Argentina, Cape Verde, Chile, Italy, Luxembourg, Paraguay and Uruguay). Beneficiaries who are resident in the above countries must therefore appoint a substitute in Brazil, to whom the benefits will be paid. However, the payment of Brazilian benefits to beneficiaries resident abroad through the competent institution of the contracting State is envisaged and carried out on the basis of bilateral agreements with Greece, Portugal and Spain. With regard more specifically to Italy, the Government explains that, although section 15(2) of the Additional Protocol to the migration agreement signed between Italy and Brazil in Brasilia on 30 January 1974 provides that the payment of benefits may be made directly to beneficiaries residing in the other contracting State or through the liaison bodies of the States concerned, in practice the benefits provided by the Brazilian general social security scheme are paid to beneficiaries residing in Italy through their substitutes who are resident in Brazil. According to the Government, this is due in the first place to the fact that there is no arrangement between Brazil and Italy for Brazilian benefits to be paid through the Italian liaison body and, secondly, to the fact that the Brazilian social insurance system does not currently have a system for making direct payments to beneficiaries resident in Italy. With regard to the new social security agreement signed with Italy on 26 June 1995, section 23 of which also provides for the payment of benefits to beneficiaries residing in the other contracting party either directly, or through the competent institution in the country of residence, the Government indicates that this agreement was approved by the Brazilian National Congress by means of Legislative Decree No. 32 of 1997 and transmitted to the President of the Republic for enactment. However, it cannot yet be promulgated, and therefore applied, because it has not been approved by the Italian Parliament. Finally, with regard to the ministerial instructions envisaged in section 203 of the Regulations respecting social insurance benefits in the event of the absence in bilateral agreements of provisions concerning the direct payment of Brazilian benefits or their payment through the competent institution in the country of residence, the Government indicates that such instructions are issued on each occasion that guidance is found necessary in this field in the form of a ministerial decision or an opinion of the legal service or even an instruction from the social insurance secretariat, which is the technical body responsible for the application and interpretation of the social insurance legislation administered by the INAS.

Taking into account this information, the Committee would be grateful if the Government would indicate in its next report any progress achieved with a view to:

- (a) establishing a system for the direct payment of social security benefits to beneficiaries residing abroad, whether or not they are provided under international agreements, by modifying the current contract between the social security scheme and the Bank of Brazil;
- (b) extending this payment system to cover the provision of invalidity, old-age, survivors' and employment injury benefits, both to Brazilian nationals and to the nationals of any other State which has accepted the obligations of the Convention

for the corresponding branches, as well as for refugees and stateless persons, irrespective of their country of residence;

- (c) issuance of the ministerial instructions envisaged by section 203 of the Regulations on the payment of social security benefits for the purpose of implementing the above system of transfer of benefits in the States concerned which have ratified the Convention;
- (d) supplementing, where appropriate, the bilateral social security agreements concluded by Brazil with provisions for the payment of benefits directly to beneficiaries or through the competent institution in the other contracting State;
- (e) enacting and applying in practice the new social security agreement concluded with Italy on 26 June 1995, which provides for the payment of benefits to beneficiaries residing in the other contracting party either directly or through the competent institution in the country of residence;
- (f) compiling reliable statistical data on the number of beneficiaries residing abroad and the amounts of benefit paid to them; and
- (g) concluding bilateral agreements with Austria, Canada, Guatemala and the United States in the field of social security.

Central African Republic (ratification: 1964)

The Committee notes with regret that the Government's report has not been received. It notes however, from the report supplied by the Government for the period ending 31 May 1998, that no new measure affecting the application of the Convention has been taken and that the Government wishes the Committee to refer to its previous report of 1997. In this situation, the Committee is bound to repeat its previous observation hoping that the Government's next report will contain full information on the following points:

Article 4 (branch (g)) (employment injury benefit). Section 27 of Act No. 65-66 of 24 June 1965 on industrial accident compensation should be supplemented by an express provision that in the case of a victim of an occupational injury who was a national of a State which has accepted the obligations of the Convention concerning employment injury, his dependants (survivors), even if they were resident abroad at the time of the victim's death and continue to reside abroad, shall receive survivors' benefits, if it is proved that they were actually dependent at the time of his death.

Article 5 (branch (e)) (old-age benefit). The national legislation should be amended to provide for payment of old-age benefit in case of residence abroad, both to nationals of the Central African Republic and to nationals of any other member State that has accepted the obligations of the Convention concerning branch (e).

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Italy (ratification: 1967)

Articles 3 and 10, paragraph 1, of the Convention, branch (e) (old-age benefit). With regard to its previous observation, the Committee notes with interest the adoption of article 39 of Act No. 40 of 6 March 1998 (now article 41 of Legislative Decree No. 286 of 25 July 1998) which confers on all foreign nationals holding a

residence card or permit valid for at least one year, as also on the minors entered in their residence card or permit, equal rights with Italian citizens with regard to the provision of social security benefits. In this connection, it notes with satisfaction the Government's statement that the said article 41 covers in particular the social allowance ("assegno sociale") provided for in section 3, paragraph 6, of the Act of 8 August 1995 and is also applicable to stateless persons. This new provision thus gives full effect to the principle of equal treatment in line with *Articles 3 and 10, paragraph 1*, of the Convention, taking into account the special provision of *Article 4, paragraph 2(c)*, of the Convention as regards the grant of non-contributory benefits within Italy.

As regards the provision of this benefit in case of residence abroad (*Article 5* of the Convention), the Committee refers to the comments addressed directly to the Government.

Mauritania (ratification: 1968)

The Committee notes with regret that the Government's report has not been received. Furthermore, it noted with regret that the previous Government's report contained no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

Article 5 of the Convention (provision of benefits abroad). Further to its previous comments concerning the provision of benefits due to Mauritanian nationals who left Mauritania following the events of 1989, the Government indicates in its report that the National Social Security Fund insures the payment of benefit to Mauritanian nationals who left Mauritania in 1989, and it has already proceeded to regularize the claims of 10 pensioners and 13 other beneficiaries. The Government also states that Senegalese nationals entitled to benefits from the National Social Security Fund have been paid in accordance with Circular No. 120/DG of 28 November 1993 which authorizes the payment of arrears dating from April 1989.

The Committee notes this information with interest. It would like the Government to indicate whether there are other Mauritanian nationals entitled to benefit under the branches accepted by Mauritania (invalidity, old age, survivors' and work injury) who are still waiting to receive the benefit. It also requests further information on whether payments are made in periodic form.

Articles 7 and 8. The Committee notes that the Government's report does not provide any information on the provisions made concerning protection of the rights in the course of acquisition of Mauritanian nationals who had to leave the country after the events of 1989. It would appreciate receiving information on the measures taken in this respect (in particular as to old-age pensions).

The Committee also requests detailed information on the practical application of the Convention, in accordance with *Part V of the report form*, including statistics of the amount of the benefits transferred to beneficiaries who reside outside the country.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Suriname (ratification: 1976)

With reference to its previous observations which it has been making for many years, the Committee notes the Government's statement from its latest report that some of the principles set out in the Convention are not fully applied, which is due to the

absence of a national social security scheme. Concerning, in particular, *branch (g) (employment injury benefit)*, in respect of which the obligations of this Convention have been accepted, the Committee notes that, according to the report, all the benefits which are granted to nationals and non-nationals are subjected to the condition of residence, contrary to *Article 4 of the Convention*; there is no payment of benefits abroad and no bilateral or multilateral agreements exist to give effect to *Article 5* of the Convention; and none of the social security benefits are applicable to refugees and stateless persons, contrary to *Article 10* of the Convention. The Government states, however, that the possibility to bring the legislation in full conformity with the Convention is being considered.

The Committee recalls that since the ratification of this Convention by Suriname in 1976, it has been drawing the Government's attention to the fact that there is no provision in the legislation guaranteeing the payment of the employment injury pension abroad, particularly after the expiry of the three-year period during which, under section 6(8) of Decree No. 145 of 1947, as amended, the pension could be converted into a lump sum if the beneficiary transfers his residence abroad. It further recalls that these issues were the subject of the technical assistance projects in the social security field provided for Suriname during the 1990s by the ILO and UNDP with a view to instituting a national social security scheme and revising the labour legislation. In this situation and taking into account that, notwithstanding the repeated promises of the Government and the technical assistance supplied to it, no progress has been made in the application of the Convention, the Committee once again strongly urges the Government to take all necessary measures in the very near future to bring its national law and practice into full conformity with the abovementioned provisions of the Convention.

Syrian Arab Republic (ratification: 1963)

Article 5 of the Convention. In reply to the Committee's previous observation, the Government indicates that the draft Decree to amend section 94 of the Social Insurance Code (Act No. 92 of 1959) to enable the beneficiaries to request payment of the pension abroad to their new country of residence, which had been prepared by the Ministry of Social Affairs and Labour over 15 years ago, was transmitted in 1998 to the Council of Ministers to complete publication procedures but was once again returned back by the latter. The Ministry, in cooperation with the Public Social Security Institution and the Social Partners Dialogue and Consultation Committee, is currently examining all the comments made to the Social Insurance Code and preparing a draft Legislative Decree to amend it in a manner that would accommodate the comments of the Committee of Experts and facilitate further ratification of the pertinent international labour Conventions. The Government stresses in this respect that in Syria ratified Conventions have the authority of domestic law and priority in case of conflict of laws.

The Committee notes this information. It once again expresses the hope, as it has been doing since the ratification of this Convention by the Syrian Arab Republic in 1963, that to resolve conflict between *Article 5* of the Convention and section 94 of the Social Insurance Code, the Government will not fail to take all necessary measures to amend this section so as to ensure payment of social security benefits to the beneficiaries residing abroad.

Article 10, paragraph 1. In response to the Committee's comments on the need to explicitly include refugees and stateless persons within the field of application of the Social Insurance Code, the Government states that the Code is implicitly applied to these persons by virtue of the general rule of law that unrestricted provisions have general application and the fact that refugees and stateless persons are not expressly excluded from the scope of the Code. The Committee would like to point out in this respect that, by contrast with the general rule of law referred to by the Government, *Article 10(1)* establishes a specific rule of law explicitly including refugees and stateless persons in the application of the provisions of the Convention, which, as recognized by the Government itself, should prevail in case of conflict of laws, including conflict between the specific and the general rule of law. The Committee trusts therefore that in order to remove any ambiguity in the national law the Government would not fail to explicitly include refugees and stateless persons in the scope of the Social Insurance Code, the one actually in force and the new one to be adopted. Please indicate the progress made in this respect in the next report.

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In addition, requests regarding certain points are being addressed directly to the following States: *Central African Republic, Democratic Republic of the Congo, Egypt, Italy, Mauritania, Mexico, Philippines*.

Convention No. 119: Guarding of Machinery, 1963

Brazil (ratification: 1992)

The Committee notes the comments made by the Union of Workers from the Marble, Granite and Lime Industry of the State of Espírito Santo (SINDIMAMORE). It is following up these comments under the Occupational Safety and Health Convention, 1981 (No. 155).

The Committee is also addressing a request to the Government regarding other points.

Democratic Republic of the Congo (ratification: 1967)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

Articles 2 to 4 of the Convention. For several decades the Committee has drawn the Government's attention to the absence of measures giving effect to the abovementioned Articles and to the need to make provision in the national legislation for, or to establish by other equally effective measures, the prohibition of the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts are without appropriate guards, with the obligation, to respect this prohibition being placed on the person selling, hiring, exhibiting or transferring the machinery in any other manner, or on their representatives.

In its reports, the Government referred on several occasions to a draft Order relating to the guarding of machinery and to the review of the Labour Code as part of which provisions designed to give effect to the Articles of the Convention in question would be adopted. The Committee notes that this position was confirmed by government representatives during the technical advisory mission conducted by the ILO in 1997.

The Committee once again express the hope that in the very near future the Government will take all the necessary measures to ensure finally that the provisions of *Articles 2 to 4* of the Convention are applied.

Sierra Leone (ratification: 1964)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

For a number of years, the Committee has drawn the attention to the fact that national legislation does not contain provisions to give effect to *Part II of the Convention* (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of *Article 17* of the Convention (which applies to all sectors of economic activity), as it is not applicable to certain branches of activity, inter alia, sea, air or land transport and mining.

Since 1979, in reply to the Committee's comments, the Government has indicated in its reports that a Bill to revise the 1974 Factories Act was being drafted and would contain provisions consistent with those of the Convention, and would apply to all the branches of economic activity. In its latest report (received in 1986), the Government indicates that the draft Factories Bill, 1985, has been examined by the competent parliamentary committee and is to be submitted to Parliament for adoption.

With its report for the period ending 30 June 1991, the Government supplied a copy of extracts of the Factories Bill containing provisions which should give effect to *Part II* of the Convention. In this connection, the Government was requested to indicate the stage of the legislative procedure reached by the Bill and the body which was in the process of examination of the Bill. Since no information has been provided by the Government in this respect, the Committee once again expresses the hope that the abovementioned Bill will be adopted in the near future and requests the Government to provide a copy of this text, once it has been adopted.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to *Brazil*.

Convention No. 120: Hygiene (Commerce and Offices), 1964

Paraguay (ratification: 1967)

1. The Committee notes with satisfaction the provision of section 227, paragraphs 1 and 5, of Decree No. 14390 of 1992, determining minimum and maximum standards of temperature and humidity with regard to the climate and nature of work, applying *Article 10 of the Convention*. It also notes with satisfaction that the provisions of sections 231 and 232 of the abovementioned Decree concerning the reduction of noise and vibrations give full effect to *Article 18* of the Convention.

2. The Committee further notes with satisfaction the adoption of the new Penal Code whose section 205 stipulates that the exposure of persons in dangerous workplaces is considered as a punishable act.

3. *Article 6 and Part IV of the report form*. The Committee notes with interest the Government's indication that one of the inspection measures is the measurement of the

temperature and the level of noise at the workplace. Depending on the results of these measurements, the inspector makes proposals and gives recommendations in order to improve the conditions prevailing at the workplace. The subsequent controls are carried out in intervals of 2, 7, 15, 30, 45 etc. days depending on the particular risk found during the inspection. The Committee, taking due note of this information, invites the Government to continue to supply information on the manner in which effect is given to the provisions of the Convention in practice.

* * *

In addition, a request regarding certain points is being addressed directly to Djibouti.

**Convention No. 121: Employment Injury Benefits, 1964
[Schedule I amended in 1980]**

Bolivia (ratification: 1977)

In its previous comments, the Committee had expressed its hope that the Government would be able to supply detailed information not only in respect of the effects of the employment injuries provisions of the new Pensions Act No. 1732 of 29 November 1996 and its Regulation (Supreme Decree No. 24469 of 1997), but also on the legal provisions or regulations which ensure the application of the provisions of the Convention with respect, in particular, to medical care (*Article 12 of the Convention*) and temporary incapacity (*Article 13*). The Committee notes that neither the Government's report nor the attached legislation do contain this information. Therefore, the Committee cannot but reiterate its request for a detailed report on the implementation of the new legislation with regard to employment injuries' long-term benefits and of the current legislation on medical care and short-term benefits in the light of the pertinent provisions of the Convention, including statistical data on the scope of application and the level of benefits as required by the report form approved by the Governing Body.

In addition, after having examined the provisions of the Pension Act No. 1732 and the Supreme Decree No. 24469, the Committee wishes to draw, in particular, the Government's attention to the following provisions of the Convention.

Article 9(3). The Committee recalls that under this provision of the Convention benefit shall be paid throughout the contingency. It would like the Government to indicate how this provision has been implemented by the new legislation.

Article 16. The Committee recalls that *Article 16* of the Convention provides for the payment of increments in periodical payments or other supplementary or special benefits for disabled persons requiring the constant help or attendance of another person. It would appreciate receiving additional information on how this provision of the Convention has been implemented by the new legislation.

Article 21. The Committee recalls that invalidity and survivors' benefits currently payable must be reviewed periodically following substantial changes in the general level of earnings or substantial changes in the cost of living. The Committee would therefore like the Government to indicate how effect is given to this provision of the Convention.

Article 24. The Committee recalls that *Article 24* of the Convention provides that representatives of persons protected shall participate in the administration of a pension system. It would like the Government to indicate how effect has been given to this provision of the Convention.

Article 27. As articles 1, 3 and 5 of the Pensions Act refer to Bolivian citizens only, the Committee would like the Government to confirm that, according to article 109 of the Supreme Decree, all employees working in Bolivia are covered by compulsory insurance in the employment injury scheme regardless of their nationality.

[The Government is asked to report in detail in 2001.]

Democratic Republic of the Congo (ratification: 1967)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

In reply to the Committee's previous comments, the Government states that it is not currently in a position to provide information that would enable the Committee to assess the application of *Articles 13, 14 and 18* (in relation with *Articles 19 and 20*), as well as *Articles 21, 23 and 24(2)* of the Convention, in view of the difficult political and economic situation experienced by the country. With regard to the draft text to add to the schedule of occupational diseases, in accordance with *Article 8* of the Convention, diseases caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series and diseases caused by benzene or its toxic homologues, the Government undertakes to transmit the extended schedule of occupational diseases as soon as it has been adopted by the National Labour Council.

The Committee notes this information. It hopes that, despite the current difficulties, the extended schedule of occupational diseases will be adopted in the very near future in order to give full effect to *Article 8* of the Convention and that the Government will make every effort to provide information concerning the application of the other provisions of the Convention referred to above, as requested in its 1995 observation. The Committee would also be grateful if the Government would indicate any progress achieved in the formulation and adoption of the new Social Security Code.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Ecuador (ratification: 1978)

The Committee notes the Government's report. It notes that the report does not indicate any progress in the application of the provisions of the Convention on which it has been commenting for many years. Under these circumstances, the Committee hopes the Government will supply additional information on the following points.

Article 8 of the Convention. The Committee recalls that in its previous report the Government undertook to begin a process of amending the rules and internal provisions of the Equadorean Social Security Institute (IESS), which are currently preventing the application of a dual-list system of occupational diseases and work involving exposure to the corresponding risks. In its last report, the Government does not provide any information on the progress achieved in this reform, but refers to the provisions of the Labour Code and particularly sections 369 and 370, which cover occupational diseases. It adds that the presumption in favour of the worker concerning the occupational origin

of the disease is taken into account in the decisions of the Risk Verification Commission under the terms of section 370 of the Labour Code. According to the Government, these decisions, which are intended to allow diseases which are not mentioned in the legislation to be recognized as occupational, exempt the worker from the burden of proof, thereby waiving in practice the interpretation of section 5 of the General Regulations on Employment Injury Insurance. The Committee takes due note of this information. It therefore hopes that, with a view to avoiding any ambiguity, the Government will have no difficulty in taking the necessary measures to amend as soon as possible, as it had undertaken to do, sections 4 and 5 of the above General Regulations, so as to introduce into the legislation the presumption of the occupational origin of the disease in favour of workers suffering from a disease enumerated in Schedule I of the Convention when they are engaged in the types of work mentioned in the above Schedule. Furthermore, it requests the Government to provide copies of relevant decisions adopted under section 370 of the Labour Code. (The Committee refers in this respect to its comments in its previous direct request under *Article 8* of the Convention.)

Article 9. In its previous comments, the Committee emphasized the need to take the necessary measures to amend sections 12 and 19 of the General Regulations on Employment Injury Insurance so that workers suffering from occupational diseases, whether acute or chronic, are entitled to the benefits envisaged by the Convention irrespective of the period during which they have paid contributions. In its report, the Government states once again that, in cases where workers have not paid the six contributions envisaged by the General Regulations respecting Employment Injury Insurance (sections 12 and 19), section 14 of the above Regulations is applied, under the terms of which acute occupational diseases are considered to be employment accidents, so that the insured person is entitled to benefits in the form of both medical assistance and financial benefits. The Committee is well aware of the text of section 14 of the General Regulations on Employment Injury Insurance. However, it wishes to emphasize that the provisions of the Convention, and particularly *Article 9*, which sets out that eligibility for benefits may not be made subject to the length of employment, to the duration of insurance or to the payment of contributions, are applicable to both employment accidents and acute occupational diseases (the latter, as is the case in Ecuador, are very often assimilated to employment accidents), as well as chronic occupational diseases. In these conditions, the Committee is bound to urge the Government once again to take the necessary measures to amend sections 12 and 19 of the General Regulations on Employment Injury Insurance so that all workers suffering from occupational diseases, including chronic diseases, are eligible to the benefits envisaged by the Convention, irrespective of the period of contribution.

Articles 13, 14 and 18 (in conjunction with Articles 19 and 20) (amount of periodical payments due in the event of temporary or permanent incapacity or the death of the family breadwinner). The Government indicates in its report that it is still not in a position to indicate whether it intends to avail itself of the provisions of *Article 19* or *Article 20* of the Convention. It adds that, once the restructuring of the Ecuadorian Social Security Institute has been completed, which should occur during the course of 2000, every effort will be made to reach a decision on this matter and that it intends to request the expertise of the ILO's Regional Office in this respect.

The Committee notes this information with interest. It trusts that, with the above technical assistance, the Government will be in a position to provide all the statistical information requested by the report form under *Article 19 or 20*, whichever it decides to have recourse to. The Committee recalls in this respect the importance that it attaches to the provision of this information, which is necessary for it to determine whether the level of benefits due in the event of temporary or permanent incapacity or death attains the rate prescribed by the Convention for a standard beneficiary.

Article 21. The Government states once again that the National Wage Council determines and reviews the wages of workers in the country as a function of the minimum wage for various activities and occupations. It adds that the Ecuadorian Social Security Institute calculates the benefits due to workers on the basis of the above minimum wages; wage increases are automatically reflected in old-age and invalidity pensions, as well as those due in the event of employment accidents, in accordance with the provisions of *Article 21*.

The Committee notes this information and the statistics provided with the Government's report. However, the Committee notes that this information does not include statistics on changes made in the rate of benefits in relation to fluctuations in the cost-of-living index, as requested in the report form under *Article 21*. The Committee therefore hopes that, following the reorganization of the Ecuadorian Social Security Institute, the Government will be able, if it so wishes with the assistance of the ILO, to provide with its next report all the statistical data requested in the report form, which are necessary for the Committee to assess the real impact of increases in pensions decided upon by the IEES in relation to fluctuations in the cost of living.

[The Government is requested to report in detail in 2001.]

Guinea (ratification: 1967)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. *Article 8 of the Convention.* The Committee notes with interest the Government's statement that in 1992 the National Social Security Fund together with the National Occupational Medicine Service revised the list of occupational diseases, increasing it from 13 to 29 items, thus aligning it with the list appended to Schedule 1 of the Convention, as amended in 1980. The Committee asks the Government to provide a copy of the list, indicating whether it is now in force.

2. *Article 15(1).* In answer to the Committee's previous comments, the Government indicates that, in accordance with the provisions of section 111 of the Social Security Code, periodical payments for employment injury are converted into a lump sum when the permanent incapacity is at most equal to 10 per cent. The Committee recalls, however, that its comments concerned the possibility of converting the benefit granted in the event of employment injury in the circumstances provided for in sections 114 (conversion after expiry of a five-year period) and 115 of the Social Security Code (conversion into a lump sum of part of the periodical payment at the request of the person concerned). The Committee again expresses the hope that the necessary measures will be taken to ensure that in all these cases periodical payments may be converted into a lump sum only in exceptional cases and with the consent of the victim where the competent authority has reason to believe that the lump sum will be utilized in a manner which is particularly advantageous for the injured person.

3. *Articles 19 and 20.* The Committee notes the Government's reply. It notes however that the Government's report does not contain the statistical information requested which the Committee needs so that it can determine whether the amount of benefits paid in the event of temporary incapacity, permanent incapacity and death of the breadwinner, reaches the level prescribed by the Convention. In these circumstances the Committee once again asks the Government to indicate whether it avails itself of *Article 19* or of *Article 20* of the Convention in establishing that the percentages required by Schedule 2 of this instrument have been reached, and to provide the statistical information required by the report form adopted by the Governing Body under *Article 19* or *20*, depending on the Government's choice.

4. *Article 21.* In answer to the Committee's comments, the Government states that it has increased the benefits so as to ensure better coverage for victims of occupational accidents; furthermore, studies are under way with a view to a further increase in order to take fuller account of the economic context. The Committee notes this information. In view of the importance it attaches to this provision of the Convention which establishes that the rates of employment injury benefits must be reviewed to take account of trends in the cost of living and the general level of earnings, the Committee hopes that the Government's next report will contain information on the amount of the increases already established and that it will not fail to provide all the statistics required by the report form under this Article of the Convention.

5. *Article 22(2).* The Committee once again expresses the hope that the Government will be able to take the necessary measures to ensure that, in all cases where employment injury benefits are suspended and particularly in the cases provided for in sections 121 and 129 of the Social Security Code, part of these benefits will be paid to the dependants of the person concerned in accordance with the provisions of this Article of the Convention.

6. The Committee notes the Government's statement that the provisions of the Conditions of Service of the Public Service give public servants and their families full satisfaction as regards social coverage. It once again asks the Government to provide the text of the provisions of the above Conditions of Service dealing with compensation for employment injury with its next report.

7. Lastly, the Committee asks the Government in its future reports to provide information on any progress made in the revision of the Social Security Code, to which the Government referred previously.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Senegal (ratification: 1962)

1. *Article 21 of the Convention. Adjustment of long-term benefits.* In reply to the Committee's previous comments, the Government indicates that the adjustment of periodical payments is based on the three following criteria: the cost of living, the general increase in wages and the financial situation of the employment injury branch. In this way, following the general increase in wages which occurred during the course of 1999, employment injury benefits were readjusted as of 1 September 1999 by the coefficient 1.06. The Committee notes this information with interest, even though it is not sufficient to enable it to assess whether the Convention is fully applied on this point. The Committee once again hopes that the Government's next report, in addition to the readjustment coefficient applied and for the same reference period, will contain statistical data on fluctuations in the cost-of-living indices and the general increase in wages in the country, as well as on the adjustment of benefit rates (average per

beneficiary and benefit for standard beneficiary), as requested under *Article 21* of the Convention in the report form adopted by the Governing Body of the ILO.

2. With reference to its previous comments, the Committee regrets to note that, despite the promise made by the Government in its previous report, the current report still does not contain statistical data on the scope and level of benefits, as requested in the report form under *Articles 4 and 19 or 20* of the Convention. The Committee trusts that the Government will make every effort to provide this information with its next report.

[The Government is asked to report in detail in 2002.]

Sweden (ratification: 1969)

In its previous observation the Committee asked the Government to provide full information, including statistics, permitting an assessment of the changes in the definition of employment injury and in the burden of proof introduced since 1993, in the light of *Article 8 of the Convention*, as well as the abolition of a one-day waiting period for the payment of the cash benefits for incapacity for work due to a victim of an employment injury, in accordance with *Article 9(3)*. In reply, the Government indicates that a new Work Injuries Commission was appointed in 1997, which had in particular to analyse the last few years' changes in the work injury insurance legislation and to consider the definition of a work injury. This Commission dealt also with the problem of the waiting day rule applied to cases where short-term sickness was related to employment and presented various solutions which could be considered in order to meet the requirements of the Convention. The report of the Commission has been circulated for comment. While new demands have been made for changes to the insurance, adequate solutions have proved hard to find as regards both the waiting day question and certain other matters. For these reasons, work is still in progress on work injury insurance and its future design. In conclusion, the Government states its intention to introduce a bill on the subject in the spring of 2000.

The Committee notes this information, as well as certain judicial decisions and detailed statistics on the number of work injury claims filed, assessed, accepted and rejected over the last 18 years supplied by the Government with its report. It observes that since the introduction of the new rules in 1993, in 1998 the total number of reported work injury insurance cases and of those reported for decision decreased by more than half, while the number of accepted claims decreased by two-thirds. The Committee would like the Government to explain in its next report the reasons for such a drastic reduction in the number of claims submitted and accepted for compensation. The Committee would also like to be kept fully informed on the results of the discussions on the future design of the work injury insurance and on the measures taken in consequence. It trusts that in elaborating the new structure of sickness and work injury insurance, the Government will be able to find solutions which will ensure payment of the employment injury cash benefit from the first day of incapacity, in accordance with *Article 9(3)* of the Convention, and in all cases covered by *Article 8* and *Schedule I* to the Convention.

Uruguay (ratification: 1963)

The Committee notes the detailed information supplied by the Government in reply to its earlier comments and in particular the information relevant to the application of *Articles 4 and 9(1) and (2) of the Convention*.

With reference to its previous comments, the Committee draws the Government's attention to the fact that the frequency of statistical information called for in the report form adopted by the Governing Body as regards the review of benefits in the long term in alignment with the cost of living or level of earnings does not always allow it to appreciate the full application of *Article 21* of the Convention in practice. The Committee trusts that the Government will do its utmost to include the statistics requested in its next report as well as information on the increases in the periodical payments made in case of permanent disability and death.

Venezuela (ratification: 1982)

The Committee notes the information supplied by the Government in its reports on Conventions Nos. 102, 121, 128 and 130. It understands, moreover, that the reforms to the health and pension systems which were envisaged have not been implemented, since the new Government has decided to conduct a global re-examination of the matter. The Committee therefore hopes that the Government's next report will contain full information on all measures taken or envisaged subsequent to this examination and that, in this context, due account will be taken of the obligations arising from ratification of the Convention, and particularly the following provisions which have been the subject of its comments for many years: *Article 4* (scope); *Article 7* (industrial accidents); *Article 8* (list of occupational diseases); *Article 10(1)* (specification in legislation of types of medical care that shall be provided for persons protected); *Articles 13, 14(2), and 18(1) (read in conjunction with Article 19)* (level of cash benefits); *Article 18 (read in conjunction with Article 1(e)(i))* (increase of the age until which a child has the right to a survivor's benefit); *Article 21* (long-term review of benefits); *Article 22(1)(d) and (e) and (2)* (suspension of benefits).

[The Government is asked to report in detail in 2001.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Netherlands, Uruguay*.

Convention No. 122: Employment Policy, 1964*Italy (ratification: 1971)*

Articles 1 and 2 of the Convention. The Government states that it has finalized the Employment Action Plan, which is based on the four pillars of the Luxembourg Summit Agreement (employability, entrepreneurship, adaptability, and equal opportunity). The Government states that the Employment Action Plan and general employment strategy were established in collaboration with the social partners, and formally agreed to in two signed documents, in 1996 and 1997. The report provides detailed information on programmes established and measures taken to date to implement the Employment

Action Plan. The Committee asks the Government to provide information in future reports on the outcome of the measures taken under the Employment Action Plan, in particular the effect on employment promotion in the *Mezzogiorno*. In this respect, the Committee notes the detailed employment statistics for managers provided by the Minister of Labour. It would appreciate receiving disaggregated employment data on the other segments of the labour market, in particular concerning youth, women, people with disabilities, and the long-term unemployed, as requested in the *report form under Article 1*.

The Committee also notes the labour market trends indicated in the Annual Report of the National Statistical Institute (presented May 2000) concerning gender issues in employment. The Report states that there is a high presence of women in tertiary activities, as well as exceptional access for women to generally male-dominated professions. The percentage of men in female-dominated professions has also increased. However, the Government comments that "women usually have educational backgrounds and certificates for which there is less demand", leading to lower pay; and "even when women have the same characteristics as men, women experience more difficulties accessing the job market", leading to lower compensation. Women in the *Mezzogiorno* have more limited access to training. Lastly, the increase in the number of senior citizens has placed an increased burden on women to remain out of the labour market for longer periods of time or to seek primarily part-time or temporary work in order to care for dependents. The Committee appreciates the complexity of the issues involved, and notes the strategies the Government has already adopted to promote employment for women, in particular increasing female self-employment and entrepreneurship. It would appreciate receiving further information on the efforts to improve women's access to training and to ensure that the training provided better meets market demands for skills; and on strategies developed to ease the burden of caretaking for women who wish to remain in or re-enter the labour market.

The Annual Report of the National Statistical Institute also indicates that young people have more difficulties accessing training courses because training generally is biased towards university graduates, workers with professional diplomas, and workers with work experience. The Committee notes from the OECD Economic Survey for Italy that the Government has adopted a master plan to improve training which targets the needs of youth. However, the OECD considers that the Government is under-investing in skills development, and that much of unemployment can be accounted for by mismatch of skills to demand in the labour market. Please provide further information on the outcome of the master plan, particularly concerning employment promotion for youth.

Portugal (ratification: 1981)

Article 1 of the Convention. The Committee notes the information contained in the Government's detailed report. In particular, it notes the improvement in the general state of the economy, and the positive trends in employment growth, increased participation, and decreased unemployment for many categories of workers. The Central Union (CGTP) states that the Government has made some progress, but it does not agree with the Government's focus on active employment policies. The CGTP also considers that there has been an increase in the precariousness of employment. The Government agrees with the CGTP that there has been an increase in non-permanent contracts, particularly

affecting young workers, women, and part-time workers. However, it points out that there has been modest but positive growth in permanent contracts, from which women have benefited the most.

The Government states in its report that one of the main structural problems is the generally low level of education and training, which is discouraging further private investment in training. In addition, the CGTP points out that there are problems of mismatch between skills and available jobs in the labour market, resulting in young people being forced to accept jobs for which they are overqualified. In response, the Government has implemented several measures to increase the general level of skills, and to improve coordination between supply and demand. The Committee would appreciate receiving further information on the outcome of these measures, as well as other measures to stimulate appropriate employment for higher-skilled workers.

The CGTP also points out that the employment created is generally of low quality, and is concerned that the labour market is splitting between high and low skilled workers, on the one hand, who are able to find employment more easily, and medium-skilled workers who are having more difficulties. The Government also states that the low skills base is skewing production towards low-productivity labour-intensive technologies which result in lower wages. However, it has set new targets for information and communication technology (ICT) training in at least 50 per cent of continuing training courses, and is taking steps to encourage firms to invest in new technologies. The Committee requests further information on the outcome of this strategy.

The Government also states that the National Action Plan for Employment (NAP) 1998-2002 will improve linkages between social protection and employment policies, improve social dialogue and partnerships at various levels, create partnerships with local developmental organizations, and aim to reduce gender-based inequalities. Furthermore, the NAP will develop, test and spread good practices at the micro level. Numerous measures have been taken to carry out these goals. The Committee notes these measures with interest and requests further information on their outcome.

Lastly, the Committee notes with interest the Government's efforts to engage a cross-section of several ministries to promote employment, and to develop both national and regional strategies. Included are the Ministries of Economic Affairs, Finance, Planning, Education, Science and Culture, Equal Opportunity, Reform of State, and Youth. Please provide further information on progress made in this respect.

Article 2. The Committee notes with interest that the Government has changed its monitoring indicators, from a focus on expenditures to a focus on results. Evaluations are scheduled every six months, and carried out by a tripartite working group on technical monitoring of the NAP. For its part, the CGTP considers that there is no follow-up to some evaluations; it would like to see a permanent system of evaluation established, with greater efforts made by the employment service to monitor employment trends within its competence. The Committee would appreciate receiving further information on the evaluation methodologies developed, on the outcomes, and on the follow-up action taken.

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In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Bosnia and Herzegovina, Cambodia, Cameroon, Chile, China, China (Hong Kong Special Administrative Region), Cyprus, Czech Republic, Ecuador, Guatemala, Hungary, Ireland, Jamaica, Kyrgyzstan, Latvia, Mauritania, Republic of Moldova, Mongolia, Papua New Guinea, Slovakia, Slovenia, Tajikistan, Thailand, Zambia.*

Convention No. 124: Medical Examination of Young Persons (Underground Work), 1965

Requests regarding certain points are being addressed directly to *Austria, Azerbaijan, Belarus, Bolivia, Gabon, Kyrgyzstan, Madagascar, Malta, Tajikistan, Uganda, Ukraine, Viet Nam, Zambia.*

Convention No. 125: Fishermen's Competency Certificates, 1966

Sierra Leone (ratification: 1967)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

In earlier comments the Committee had noted that there existed no laws or regulations to give effect to the Convention. In its latest report (1995) the Government indicated that it had formulated new regulations for the fishing industry which would incorporate the Committee's comments. The Committee hopes that the Government will provide information on the measures adopted to apply the provisions of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 126: Accommodation of Crews (Fishermen), 1966

Requests regarding certain points are being addressed directly to the following States: *Sierra Leone, United Kingdom.*

Convention No. 127: Maximum Weight, 1967

Algeria (ratification: 1969)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. *Articles 3 and 7, paragraphs 1 and 2, of the Convention.* Further to its previous comments noting the absence of legislation limiting the weight of loads to be manually transported by adult males, the Committee notes with satisfaction that article 26 of Executive Decree No. 91-05 of 19 January 1991, concerning the general protective provisions applying in the field of safety and health in the work environment, sets the maximum weight of loads to be manually transported by adult males at 50 kg, and the maximum weight of loads to be transported manually by women and young workers at 25 kg.

In this connection, the Committee would, however, refer the Government to the ILO publication "Maximum weights in load lifting and carrying" (Occupational Safety and Health Series, No. 59, Geneva, 1988), in which it is indicated that 15 kg is the limit, recommended from an ergonomic point of view, of the admissible load for occasional lifting and carrying for a woman aged between 19 and 45 years. The Committee hopes that the Government will keep the matter under review so as to further limit the assignment of women workers to the manual transport of light loads, not exceeding, as much as possible, 15 kg, and that it will indicate the measures taken or envisaged to this end.

2. *Article 6 of the Convention.* The Committee notes that modernization is taking place in the country and that the mechanization of operations has improved conditions of work and reduced the fatigue and risks encountered by workers. The Committee hopes that the Government will supply more detailed information on the technical devices used that limit and facilitate the manual transport of loads.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Chile (ratification: 1972)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

The Committee notes the information provided by the Government in its report and also the information provided in response to the Committee's previous comments.

1. *Article 3 of the Convention.* The Government states that the Committee's comments have been submitted to a special committee which is examining the general regulations of the Labour Code Bill. It also states that the social security directorate, through its medical department, proposes to fix the maximum load at 50 kg, whereas the Chilean Security Association, which is one of the employers' insurance companies providing social assistance in the event of industrial accidents or sickness, has proposed that this load is fixed at 55 kg. The occupational health department of the Ministry of Health, which the Government had consulted, considers that the legal provisions which are in force are insufficient to ensure the application of the measures provided for by this Article of the Convention. Consequently, the Ministry of Health will discuss this question when it examines the draft regulation drawn up by the Ministry of Health to amend Supreme Decree No. 745 of 1993 respecting the essential occupational health and safety conditions, which should enable the insertion of the provisions concerning the ergonomic risks to which workers are exposed.

The Committee trusts that these measures will shortly be adopted to clarify this situation in law and that the Government will provide full information in respect of the measures adopted in this regard.

2. In addition, the Committee notes that the report does not contain new information in response to the questions raised and recalls that its previous comments referred to the following points.

Article 6. The Committee had noted that section 8 of Circular No. 30 provides that mechanical devices shall be used for the transport of loads weighing over 55 kg. While this represents an improvement over the previous weight limit of 80 kg required for the use of such devices, the Committee points out that *Article 6* of the Convention requires suitable technical devices to be used as much as possible, and not only for loads over the 55 kg weight limit. The Committee had requested the Government to indicate the measures taken or envisaged in order to give full effect to this provision of the Convention.

Article 7, paragraph 1. The Committee had noted that Circular No. 30 does not provide that the assignment of women and young workers to the manual transport of loads other than light loads shall be limited. The Committee had expressed the hope that the Government would take the necessary measures to ensure full compliance with this provision of the Convention.

Article 7, paragraph 2. The Committee had noted that section 4 of Circular No. 30 prescribes that the maximum weight of loads for women and young workers shall be substantially less than that permitted for men, without however specifying maximum limits. It had requested the Government to indicate whether weight limits have been prescribed or envisaged in this regard.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guatemala (ratification: 1984)

The Committee notes the information supplied by the Government in its latest report. Further to its previous comment, it wishes to draw the Government's attention to the following points.

1. *Articles 3 and 7 of the Convention.* The Committee notes the provisions of Administrative Order No. 885 of 26 March 1990 in application of, *inter alia*, the occupational safety and health provisions of the Labour Code. Section 202 of the Labour Code provides for the promulgation of regulations to specify the admissible weight of loads to be transported by a single person, with due consideration being given to factors such as the age, sex and physical condition of the worker. In this respect, the Committee notes the provisions of section 6 of Administrative Order No. 885, 1990, providing that the maximum weight that may be carried by a male worker under the age of 60 is 120 pounds, equivalent to 60 kg. The Committee therefore wishes to draw the Government's attention to Paragraph 14 of the Maximum Weight Recommendation, 1967 (No. 128), which provides that where the maximum permissible weight which may be transported by one adult male worker is more than 55 kg, measures should be taken as speedily as possible to reduce it to that level. It also refers to the recommendations contained in the ILO publication "Maximum weights in load lifting and carrying" (Occupational Safety and Health Series, No. 59, Geneva, 1988) indicating 55 kg as the limit recommended from the ergonomic point of view which may be lifted *occasionally* by a male worker between 19 and 45 years of age, and 45 kg is the limit recommended for male workers over the age of 45.

The Committee further notes that section 6 of Administrative Order No. 885, 1990, determines 60 pounds, equivalent to 30 kg, as being the maximum weight that may be transported by a healthy female worker under the age of 50. The Committee referring again to the abovementioned ILO publication states that 15 kg is the limit recommended from an ergonomic point of view for the load permitted to be lifted and transported *occasionally* by an adult woman, and 10 kg is the limit recommended in the case of a more frequent lifting and carrying of loads.

The Committee, however, notes with interest the Government's indication that a pre-draft concerning a new regulation on hygiene and security is under preparation providing for a maximum weight of 50 kg that may be carried by a male worker. It also notes with interest that discussions between the Ministry of Labour, the employers and

workers have been started to this effect. Nevertheless, the Committee invites the Government to reconsider as well the provision of section 6 of Administrative Order No. 885, 1990, with respect to the maximum weight that may be carried by a female worker. The Committee hopes that the new regulation on hygiene and security providing for new limits concerning the maximum weight that may be transported by a single worker will be issued in the near future.

2. *Article 5.* The Committee notes with interest section 2 of Administrative Order No. 885, 1990, providing that every worker assigned to the manual transport of loads must get instructions, prior to such assignment, on methods of lifting loads correctly according to the different types of loads to be transported. The Committee further notes the information supplied by the Government to the effect that the School of Capability of the Security and Hygiene Section, which is a branch for formal education, has established a new education method which is called "school without walls". According to the Committee's understanding, this school provides training to the workers directly at enterprise level which facilitates the workers' access to training. The Government further explains that, at present, all information and training-related activities are carried out in accordance with the provisions of Administrative Order No. 1002, 1995, concerning the protection of accidents, and that the Technical Institute on Capability and Productivity (INTECAP) is responsible to carry out basic activities related to occupational safety and health (section 4 of Decree No. 17-72 issued by the Congress of Guatemala). With regard to the promotion and dissemination of information on the manual transport of loads, the Committee notes that the Institute of Social Security has published information material concerning the correct lifting of loads with due view to ergonomic demands. The Committee taking due note of this information would invite the Government to continue to provide information regarding training activities and instructions of workers prior to their assignment to work involving manual transport of loads.

Hungary (ratification: 1994)

The Committee notes with regret that the Government's report once again does not contain any new information in reply to its previous comments. The Committee is therefore bound to take up once again the matters which it raised previously. It hopes that the Government will not fail to take the necessary measures and to provide full particulars on the points raised in its previous comment, which reads as follows:

1. *Article 1 of the Convention.* The Committee notes that the Government's indications in relation to the terms "manual transport of loads" and "regular manual transport of loads" do not define these terms clearly. It also notes the Government's indication that there are three age classes to define the term "young worker". The Committee requests the Government to indicate how the terms "manual transport of loads" and "regular manual transport of loads" are defined in national law and practice by indicating the respective legal provisions. Furthermore, it requests the Government to explain in detail how and by what measures the term "young worker" is defined for the purpose of this Convention.

2. *Article 6.* The Committee notes the Government's indication that section 54 of the Labour Protection Act, which also covers all areas of handling/moving materials, requires the employer to make a risk assessment. The Committee recalls that *Article 6* of the Convention calls for suitable technical devices to be used as much as possible in order to

limit or facilitate the manual transport of loads. It requests the Government to supply information on the measures taken to ensure that effect is given to this Article of the Convention.

3. *Article 8.* The Committee notes with interest that Council Directive No. 90/269 on the minimum health requirements for the manual handling of loads where there is a risk particularly of back injury to workers is currently in the process of being implemented at the national level, and that to this effect it is being discussed in the Labour Protection Committee of the Interest Reconciliation Council with a view to preparing its enactment as a ministerial decree. The Committee would be grateful if the Government would supply a copy of the ministerial decree as soon as it has been adopted.

4. *Part III of the report form.* The Committee notes the Government's indication that, due to organizational changes at the beginning of 1997, inspections are carried out by the county and city occupational health and safety inspectorates. The Committee requests the Government to provide detailed information on the organizational structure of the inspection services, as well as their working methods for the supervision of the legislation which gives effect to the provisions of the Convention.

5. The Committee requests the Government to supply a copy of the Labour Protection Act and of Decree No. 2/1972 (MK6) of the Minister of Transport and Postal Services.

Italy (ratification: 1971)

The Committee notes the information supplied by the Government in its last report as well as the additional communication providing for clarifications regarding the explanation given in the Government's report. The Committee wishes to draw the Government's attention to the following points.

Article 3 of the Convention. The Committee notes with interest the provisions of Legislative Decree No. 626 of 19 September 1994, which entered into force in January 1997, regarding the enforcement of European Community directives on improvements in occupational safety and health, better known as Workers' Safety Act, and in particular the provisions contained in its part V concerning the manual transport of loads. As concerns the maximum weight that may be transported manually by an adult male worker, Legislative Decree No. 626/1994 itself does not provide for any limitation in this respect. Section 48 of Legislative Decree No. 626/1994 intends in the first line to avoid that loads are transported manually by providing for the employer's obligation to adopt organizational measures to this end and to put appropriate means at the workers' disposal, in particular mechanical equipment. However, in the case that the manual transport of loads is inevitable, the employer must adopt organizational measures and appropriate means to ensure that the manual transport of loads is undertaken with the greatest possible protection for the workers' safety and health. To this effect, paragraph 2 of section 48 of Legislative Decree No. 626/1994 stipulates that the employer must take into consideration the individual risk factors, which are listed as terms of reference in its Annex VI. The Committee notes that paragraph 1 of Annex VI says that loads of more than 30 kg weight may represent a risk, particularly to back injury. Thus, the Committee understands that 30 kg is the maximum permissible weight that may be carried manually by a single adult worker. The Committee therefore would ask the Government to confirm that 30 kg in fact represents the admissible weight limit for lifting and carrying loads by a single adult worker which would be in conformity with Article 3 of the Convention and the maximum weight recommended in paragraph 14 of

its accompanying Recommendation, 1967 (No. 128), concerning the maximum permissible weight to be carried by one worker.

Articles 7 and 8. With regard to women workers, the Committee once again notes the Government's indication that the employment of women workers for the transport and lifting of weights as well as arduous and hazardous work is prohibited during pregnancy and up to seven months following the confinement, in accordance with section 3 of Act No. 1204 of 30 December 1971 respecting the protection of working mothers, but that restrictions upon the employment of other women in the manual transport of loads are only possible through collective bargaining in application of section 1 of Act No. 903 of 9 December 1977 respecting equality of treatment between men and women in questions of employment. In this respect, the Committee notes the Government's explanation to the effect that collective agreements under the Italian legal system have force of law and they are therefore applied *erga omnes* by the national jurisprudence. Taking note of this information, the Committee considers that *Article 8* of the Convention can be implemented by legislation as by any method consistent with national practice. However, it is not clear to the Committee whether such collective agreements exist for all employment falling within the scope of the Convention. Thus, on the basis of this information the Committee is not in a position to determine whether or not *Article 7* of the Convention is implemented. The Government is, therefore, requested to indicate which collective agreements have been concluded to implement this Article of the Convention. In the event that collective agreements presently in force do not implement the provisions of *Article 7* of the Convention, the Committee urges the Government to carry this out, either by legislation or other means, as required under *Article 8* of the Convention.

The Committee hopes that the Government's next report will contain information on the progress achieved in this regard.

[The Government is asked to report in detail in 2001.]

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In addition, requests regarding certain points are being addressed directly to the following States: *France, Republic of Moldova, Nicaragua*.

Information supplied by *Spain* in answer to a direct request has been noted by the Committee.

Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967

Bolivia (ratification: 1977)

The Committee has studied the provisions of Act No. 1732 of 29 November 1996 concerning pensions and its regulation (Supreme Decree No. 24469 of 1997) which replaces the old pension system based on share-out and administered by the Bolivian Institute of Social Security, a public body, with a completely new system based on individual capitalization of the insured person's assets and managed by private bodies ("Administradoras de Pensiones" (AFP)). The Committee has also noted the information supplied by the Government in its report along with the comments made by the Bolivian Central of Workers (COB).

In view of the fundamental changes introduced by the new legislation, the Committee emphasized in its previous comments that the Government should report in detail allowing it to assess whether the new pension system continued to ensure application of the Convention. In this regard, the Committee notes with regret that, first, the Government's report is limited to a brief description of the major provisions of the Act and that, secondly, the reply it contains to the new comments made by the Bolivian Central of Workers concerning the sale of the property belonging to the old supplementary schemes consists solely of a reference to the provisions of the Act and the responsibility of the Ministry of Finance ("Ministerio de Hacienda"). In these circumstances, the Committee is bound to reiterate the hope that the Government will not fail to supply a detailed report on the implementation of the reform in the light of each Article of the Convention, containing all the statistical information required by the report form. The Committee also wishes to draw the Government's attention to the following specific points:

1. *Scope.* The new system covers compulsorily persons who are in a dependent employment relationship while others may be affiliated on a voluntarily basis (sections 5 and 24 of Act No. 1732 and section 109 of the Decree). In order to ascertain better in practice the extent of cover of the new pensions regime in relation to the provisions of *Articles 9, 16 and 22 of the Convention*, the Committee would appreciate the Government providing with its next report all the statistical information required by the report form under these Articles of the Convention.

2. *Level of benefits.* (a) *Invalidity and survivors' benefits (sections 10 and 23 in relation to Article 26 of the Convention).* According to sections 8 and 9 of the Act and section 41(c) of the Decree, the invalidity and survivors' benefits (paid to a widow with two children) may not be less than 70 per cent of the insured person's basic salary. Given that a maximum is prescribed for the basic salary serving for calculation of the abovementioned benefits (60 times the minimum national wage in force, according to section 5 of the Act), the Committee trusts that the Government will not fail to supply all the statistical information required by the report form under *Article 26 of the Convention* (Titles I, II and IV).

(b) *Old-age benefits (section 17 in relation to Article 26 of the Convention).* The Committee notes that, according to section 7 of the Act, the amount of the pension depends on the capital accumulated in the worker's individual account. In addition, pursuant to section 17 of the Act and sections 18 and 19 of the Decree, the pension may take two different forms according to the type of contract selected. If the affiliated person chooses a *life annuity contract*, the amount of the pension will be fixed and will correspond to at least 70 per cent of the minimum wage in force; if the affiliated person chooses a *variable monthly annuity contract*, the amount of the first pension payment will also correspond to at least 70 per cent of the minimum wage in force; subsequently, the amount of the pension will vary as a function of the mortality of the group of pensioners who have selected this pension system as well as the return on the variable monthly annuity account. In order to ascertain whether the amount of the old-age pension paid by virtue of the new Act on pensions amounts at least to the minimum prescribed by the Convention (45 per cent of the reference salary when the affiliated person has completed 30 years of subscriptions or employment), the Committee would be grateful if the Government would supply all the statistical information requested by the report form on *Article 26 of the Convention*, Titles I and III.

3. *Reduced old-age benefits (section 18 in relation to Article 19 of the Convention).* According to section 13 of the Decree, if the old-age pension resulting from the accumulated capital is lower than 70 per cent of the minimum salary in force, the affiliated person may withdraw from his account, from the age of 65 onwards, monthly amounts equivalent to 70 per cent of the said minimum salary until the capital accumulated in his account is exhausted. The Committee wishes to draw the Government's attention to the fact that in application of *Article 18, paragraph 2(a)*, of the Convention reduced old-age benefits must be guaranteed at least to a person protected who has completed, prior to the contingency, a qualifying period of 15 years of contribution or employment and that this reduced benefit must be provided throughout the contingency in accordance with *Article 19* of the Convention. The Committee would be grateful if the Government would supply detailed information on how effect is given to the Convention on this point.

4. *Duration of benefits (Articles 12, 19 and 25).* The Committee would be grateful if the Government would supply detailed information on how effect is given to these provisions of the Convention which stipulate that benefits must be granted throughout the contingency (or, for invalidity benefits, until an old-age benefit becomes payable), whatever the type of pension chosen (life annuity contract or variable monthly annuity contract). Please indicate in particular whether, whatever the type of pension chosen, the invalidity, old-age and survivors' benefits at the level prescribed by the Convention are guaranteed for a standard beneficiary throughout the contingency (or, for invalidity benefits, until an old-age benefit becomes payable). More particularly, on variable monthly annuity contracts, the Committee would be grateful if the Government would supply detailed information on the impact in regard to *Articles 19 and 25* of the Convention of section 19 of the Decree under which the amount of the variable monthly annuity will depend on the mortality of the group of pensioners having selected this method as well as on the profitability of the variable monthly annuity account.

5. *Age of eligibility for a pension (Article 15).* The Committee notes that, according to section 7 of the Act on pensions, the age of entitlement to old-age benefits is 65 years, unless the capital accumulated by the insured person in his individual account before that age is sufficient to allow payment of a pension equal to at least 70 per cent of the basic salary. The Committee recalls that, under the former share-out system, the age of entitlement to a pension was 55 years for men and 50 for women. The Committee wishes to draw the Government's attention to the fact that in application of *Article 15, paragraph 3*, of the Convention, the age for entitlement to a pension shall be less than 65 years in respect of persons who have been engaged in occupations that are deemed to be arduous or unhealthy. The Committee also recalls in this respect the comments of the COB which emphasizes that average life expectation in Bolivia is less than 65 years. The Committee would therefore be grateful if the Government would indicate in its next report the measures taken or envisaged to respond to this concern in the light of *Article 15, paragraph 3*, of the Convention.

6. *Revision of benefits (Article 29 of the Convention).* The Committee recalls that, under *Article 29* of the Convention, the amount of invalidity, old-age and survivors' pensions shall be reviewed periodically following substantial changes in the general level of earnings or substantial changes in the cost of living. The Committee notes in this regard that sections 2, 4 and 320 of the Decree provide an adjustment procedure for pensions being drawn and in course of acquisition, based on the devaluation of the

national currency in comparison with the United States dollar. The Committee would be grateful if the Government would provide detailed information on the application in practice of these provisions of national legislation. Please also provide all the statistical information required by the report form under this Article of the Convention in regard to pensions currently being drawn.

7. *Maintenance of rights in course of acquisition (Article 30 of the Convention).* Referring to the comments of the COB, the Committee would be grateful if the Government would supply detailed information on the application in practice of the provisions of the new legislation on pensions in regard to maintenance of rights in course of acquisition for persons affiliated to the old share-out system who, at the moment of entry into force of the new pensions scheme, had not yet reached the age of 55 years for men and 50 for women.

8. *General responsibility for the due provision of the benefits provided and for the proper administration of the system (Article 35 of the Convention).* Referring to the comments of the COB, the Committee would be grateful if the Government would supply with its next report detailed information on how effect is given in practice to Article 35 of the Convention.

The Committee would also be grateful if the Government would indicate how payment is ensured for invalidity, old-age and survivors' pensions due under the old pension system based on share-out as well as revision of these pensions to take inflation into account.

9. *Participation of representatives of the persons protected in the management of the new pensions system (Article 36 of the Convention).* The Committee recalls its previous comments regarding Article 36 of the Convention which provides that representatives of the persons protected shall participate in the management of the system. It trusts that the Government will not fail to indicate in its next report how effect is given to this provision of the Convention.

Venezuela (ratification: 1982)

The Committee notes the information provided by the Government in its report on Conventions Nos. 102, 121, 128 and 130. However, it understands that the reforms of the health and pensions system which had been envisaged have not been implemented, as the new Government has decided to undertake an overall re-examination of the matter. The Committee therefore hopes that the Government's next report will contain full information on all measures which have been taken or are envisaged following such examination, and that due account will be taken on that occasion of the obligations deriving from the ratification of the Convention, and particularly the following provisions on which the Committee has been commenting for many years: *Articles 10, 17 and 23 (in conjunction with Article 26)* (amount of invalidity, old-age and survivors' benefit); *Article 21, paragraph 1 (in conjunction with Article 1(h)(i))* (increase in the age up to which children shall be entitled to a survivors' pension); *Article 29* (review of benefits); *Article 32, paragraphs 1(d) and (e) and 2* (suspension of benefit); *Article 38* (employees in the agricultural sector).

Convention No. 129: Labour Inspection (Agriculture), 1969*Bolivia (ratification: 1977)*

The Committee notes that, according to the Government, Act No. 1715 of 19 October 1996 concerning the national agrarian reform services extends, by virtue of its final provisions, application of the General Labour Act to wage earning rural workers. The Committee would be grateful if the Government would supply a copy of the full text of this Act.

The Committee notes with interest in connection with its 1999 general observation on labour inspection and child labour, the adoption of Act No. 2026 of 27 October 1999 concerning the protection of children and young persons and, in particular, fixing the minimum age for entry to employment and prohibiting the employment of young persons on certain work.

The Committee notes, however, that application of the Convention is made difficult due particularly to the lack of human resources. It would be grateful if the Government would supply information on the measures taken or envisaged to provide the labour inspection services with budgetary allocations appropriate to the needs so as to allow satisfactory performance of its services in regard to the provisions of the Convention.

Articles 20 and 21 of the Convention. The Committee notes with regret the failure to supply an annual inspection report of which the form, publication and communication to the ILO are provided by the Convention. Noting furthermore that measures do not appear to have been taken to ensure production of such reports, the Committee reminds the Government that this is an obligation stemming from ratification of the Convention and that technical assistance from the ILO may be requested for this purpose. It would be grateful if the Government would endeavour as soon as possible to give effect to the pertinent provisions of the Convention and to communicate to the ILO any relevant information.

Part V of the report form. Noting that the Government has not indicated in its report to which representative organizations of employers and workers copies of it have been communicated, the Committee recalls that communication is an obligation laid down in article 23, paragraph 2, of the ILO Constitution and requests the Government to supply information on any particular circumstances which explain why it was not done.

Côte d'Ivoire (ratification: 1987)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes the Government's reports for 1996 and 1997 and the partial information provided in response to a number of the Committee's previous comments. The Committee also noted the Government's statement to the effect that the information concerning the labour inspectorate's activities covers all economic sectors, including agriculture. The Committee has also examined the Government's reports concerning the application of Convention No. 81. However, it notes that no annual report on the activities of the labour inspectorate has been communicated to the ILO either under Convention No. 129 or Convention No. 81. The Committee is therefore bound to again reiterate the need to

publish annual reports, to enable the supervisory bodies of the ILO to regularly assess the manner in which effect is given to the Convention and to enable the social partners concerned to keep abreast of, to refer to, and actively participate in and contribute to the activities of the labour inspectorate in the manner provided for by the legislation. Where statistics are not classified according to economic sector of activity, the Committee is unable to assess the extent or effectiveness of the activities of the labour inspectorate. In order to do so, the Committee requires specific information on the activities of the labour inspectorate, as stipulated under *Article 27 of the Convention*, irrespective of whether such information is contained in the general annual report published by the labour inspectorate to assess the appropriateness of the material, financial and human resources set aside to ensure that conditions of work in the agricultural sector are met.

Moreover, the Committee notes the information provided by the Government to the effect that the inter-professional collective agreement of 20 July 1977, whose field of application at the time of adoption excluded employers and workers in the agricultural sector, now gives effect to the Convention. The Committee notes that the provisions of this inter-professional collective agreement establishes employer obligations which require close supervision by the labour inspectorate. The Committee therefore considers the publication of periodical statistics on the violations committed and sanctions imposed indispensable in this regard.

Finally, the Committee notes that copies of annual inspection reports are not transmitted to the representative organizations of employers and workers in the agricultural sector, as a consequence of which, these organizations are unable to formulate any observations they may have on the manner in which the Convention is applied.

The Committee addresses a direct request to the Government in relation to the application of *Articles 1, 3, 6, 7, 8, 9, 42, 13, 14 and 21* of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Denmark (ratification: 1972)

The Committee notes the Government's detailed report on the application of the Convention and the considerable volume of documentation attached. In particular, it notes with interest the information supplied relating to the 1999 general observation under this Convention and Convention No. 81 concerning the extremely positive role that can be played by the labour inspectorate against undue exploitation of child labour. In this regard, the Committee notes that the measures taken by the Government to protect the safety and health of children in the agricultural sector cover young workers but also children living at agricultural undertakings and hence facing the risks inherent in the particular living conditions that predominate in the sector. The Committee also notes with particular interest the active participation of the social partners in informing the inspection authorities on the identification of such hazards. Noting that the Ministry of Labour has launched a programme entitled: "Clean Working Environment 2005" focused particularly on the campaign for the safety of children and young people, the Committee requests the Government to supply information on the progress of this programme and its impact on the campaign against undue exploitation of child labour in the agricultural sector.

The Committee is raising other points linked to the application of the Convention in a direct request to the Government.

Guyana (ratification: 1971)

The Committee notes the Government's brief report in which it indicates that there has been no change over the period covered.

1. *Annual inspection reports in the agricultural sector.* Noting once again that no annual inspection report has been communicated to the ILO in spite of its repeated requests, and contrary to *Articles 26 and 27 of the Convention*, the Committee is obliged to renew the terms of its previous observation, as follows:

The Committee notes the Government's reports for 1996 and 1998. It refers to its previous comments and again reiterates the requirement to publish and communicate to the Office, within the prescribed time limits established under *Article 26 of the Convention*, annual labour inspection reports containing the information enumerated under *Article 27* and recalls that the Government may avail itself of ILO technical assistance for the correct application of these provisions. The annual reports contain information enabling, on the one hand, the Government to regularly evaluate the overall progress in the labour inspection system and to adopt, where necessary, measures to improve its effectiveness and, on the other hand, provide the Committee with sound information to assess the manner in which the Convention is applied and to propose a more appropriate application of the Convention, where necessary. However, the Committee notes that, although the Government's report contains a statement of intent, no inspection report has been transmitted to the ILO since 1996. Moreover, the 1996 report contained only partial responses to the information required by the relevant Articles of this Convention and of the Labour Inspection Convention, 1947 (and Protocol, 1995) (No. 81). Statistics concerning the undertakings which require inspection visits and the number of workers employed in these undertakings had been omitted from the report despite their importance in assessing the appropriateness of the means made available to labour inspectors for the discharge of their duties. The Committee is bound once again to request the Government to regularly publish and transmit annual reports on the activities of the labour inspection service and reiterates its proposal to the Government to avail itself of the Office's technical assistance to establish the structures to enable the correct application of this Convention and Convention No. 81.

2. *Occupational accidents and diseases (Articles 14 and 27(f)(g)).* The Committee notes that in 1999, 2,370 accidents were registered in the agricultural sector, 15 of which were fatal. Recalling that under *Article 19*, the labour inspection must also be informed in case of occupational diseases, the Committee requests the Government to supply information on the provisions of legislation and regulations, as well as on measures of a practical nature which ensure that labour inspectors are informed not only of occupational accidents, but also of cases of occupational diseases arising in the agricultural sector and to indicate whether, as provided under *Article 19(2)*, labour inspectors are associated with any inquiry into the causes of most serious occupational accidents or occupational diseases.

Madagascar (ratification: 1971)

The Committee notes with satisfaction the information supplied by the Government in relation to its 1999 general observation on the subject of actions undertaken to organize and strengthen the activities of the labour inspection with a view to combating child labour. A survey carried out in the framework of the ILO/IPEC project has shown that child labour is as extensive in the rural areas as in urban areas and that labour inspectors working throughout the country received training in May 2000 with a view to enhancing their competence in monitoring child labour. The Committee

notes that this training ought to have made them aware of the damaging effects of child labour and enabled them to define activities to carry out with a view to improving the supervision and the elimination of child labour. It would be grateful if the Government would regularly supply information on the matter, indicating progress made and the difficulties encountered by the labour inspectors in performing this task.

The Committee also notes with interest the information supplied by the Government on the manner in which effect is given to *Article 9(2) of the Convention* which shows that, even though the inspection system has a field of general competence, the need has been felt to provide special qualifications for inspectors intended to work in the agricultural sector. Noting also that it is envisaged in the draft revision of labour legislation to make inspection supervision applicable both to conditions of work and to living conditions in the agriculture sector, the Committee would be grateful if the Government would indicate the training formula adopted in the framework of technical assistance for inspectors in agriculture, between specialization within the National Administration School of Madagascar (ENAM) or abroad, by granting a fellowship.

The Committee is addressing a request concerning other points directly to the Government.

Malawi (ratification: 1971)

The Committee takes due note of the information supplied by the Government in reply to its previous comments. The Committee refers to its observation under Convention No. 81 and asks the Government to provide the information requested concerning *Articles 3(1); 7, 10, 11, 20 and 21* of that Convention, which correspond to *Articles 6(1); 14, 15, 26 and 27 of Convention No. 129*.

Norway (ratification: 1971)

The Committee notes the Government's report. It notes that the annual inspection report contains no information on the subjects listed in *Article 27(a), (b), (c) and (e) of the Convention*. It reminds the Government that the publication of an annual report on the work of the labour inspection services containing information on all the subjects listed in this Article is an obligation stemming from the ratification of the Convention. The Committee hopes that the Government will not fail to take the necessary measures to ensure that future annual reports published by the competent authority will contain this information and that a copy of them will be sent to the ILO within the prescribed time limits.

Spain (ratification: 1971)

The Committee notes the Government's reports for the period ending September 2000. It also notes the adoption of new provisions related to the matters covered by the Convention and particularly Act No. 42 of 14 November 1997, organizing the labour and social security inspectorate, as well as the annual inspection report for 1998 containing information on most of the subjects set out in *Article 27*.

The Committee notes with interest from the annual inspection report for 1998, which covers all sectors of activity, that the staff of the inspectorate has been substantially strengthened in numbers (around 5 per cent) and in qualifications with a

view to improving effectiveness through the implementation of the above Act and that an additional increase in staffing was also envisaged for 1999. The Committee would be grateful if the Government would indicate the impact of this increase in human resources on inspection activities in the agricultural sector.

The Committee notes with interest the information contained in the Government's report received in 2000 with regard to the 1999 general observation on inspection activities to combat the abuse of child labour. It hopes that the Government will continue to provide particulars on the development of these activities in general, as well as information on the results of the activities carried out under the specific programme for young cross-border workers in 1998-99.

The Committee is addressing a request directly to the Government on certain matters.

Sweden (ratification: 1970)

The Committee notes the Government's report and the statistics on work accidents and work-related illnesses disaggregated by activity and gender for 1998, 1999 and 2000. It also notes the observations from the Swedish Agricultural Workers' Union (SAWU) and the information provided in reply by the Government and the National Board of Occupational Safety and Health. According to the SAWU, cooperation between the labour inspectorate in agriculture and employers and workers or their organizations (*Article 13 of the Convention*) is inadequate particularly at local level and should be developed on a more regular basis. The SAWU also regrets that there has been a reduction in the number of inspectors and in the time spent by inspectors in the agricultural sector (*Article 14*) despite the fact that the proportion of fatal accidents in the agricultural sector is relatively high compared to all sectors taken together. Furthermore, the time between visits and follow-up visits is becoming longer and longer because inspectors spend their time on other activities. The National Board of Occupational Safety and Health (NBOSH) for its part states that cooperation between the supervisory authorities and the organizations of agricultural employers and workers is flexible, focusing on certain specific questions in agriculture when the need arises. As to the strength of the agricultural labour inspectorate, the Government indicates that 23 inspectors are responsible for ten districts. While omitting to state whether this number is sufficient in respect of the criteria set in *Article 14* of the Convention, the Government nonetheless says that most of the fatal accidents mentioned by the SAWU involve tractors and that, consequently, in the spring of 1999 a joint official project was conducted with seven inspection districts, entitled "Safer work with farm tractors". Measures to improve safety were ordered for 71 per cent of the 1,013 tractors subjected to a technical inspection in 413 undertakings. Furthermore, the Government states that the adoption of a new supervisory approach for agricultural machinery is being implemented in 300 undertakings with an audit of 15,000 agricultural machines, and refers to measures taken by the NBOSH in 1996 to prohibit the use of agricultural machinery by minors. The Government also states that the Labour Inspectorate has alerted employers to the risks incurred by children as passengers on tractors, such as the possibility of hearing impairment or of the tractor being started by a child.

The Committee would be grateful if the Government would provide the information requested in the report form on the Convention under *Article 14* and on

practical measures taken or envisaged to ensure that inspections are carried out as often and as thoroughly as is necessary, in accordance with *Article 21*.

Uruguay (ratification: 1973)

Conditions of service and status of labour inspectors (Articles 6(3) and 8 of the Convention). The Committee notes that Act No. 16-226 of 29 October 1991 allows labour inspectors to perform, in addition to their official duties, activities not associated with them, subject to prior notification to the institution to which they belong, and that they must not take part as an inspector in any matter having a direct or indirect link with their private activity. This provision repeals section 495 of Act No. 15-809 of 10 November 1987 which, as the Government emphasized in a previous report (1993), specifically prohibited inspectors from performing other work. The Committee notes that the Government also said in the 1993 report, to establish that inspectors benefited from advantageous and preferential treatment, that in addition to the possibility of ensuring other sources of income, the supplementary remuneration which was paid to them in addition to their wage was maintained. The Committee reminds the Government that under *Article 8* of the Convention, the labour inspection staff in the agricultural sector shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences. The authority and impartiality necessary for labour inspectors in their relations with employers and workers can be ensured only if these statutory and material conditions exist. However, not only does the faculty offered to inspectors to perform other paid activities in parallel with their official duties indicate that the wages paid to them are insufficient for them to live on but, in addition, it would seem to discourage involvement with their inspection work. The Committee considers in any event that the abovementioned provision of Act No. 16-226 of 29 October 1991 is contrary to *Article 6(3)*, and to the purposes envisaged in *Article 8*. It therefore requests the Government to set in hand appropriate measures for the purpose of amending legislation on this point in order to ensure conformity with the provisions of the Convention and to supply information on any progress made in this matter.

Numbers and powers of labour inspectors (Articles 14, 15 and 21). In a comment dated 29 December 1999, the National Workers' Convention (PIT-CNT) indicates the difficulties encountered particularly by labour inspectors working in rural areas because of the lack of transport facilities necessary for the performance of their supervisory duties in paddy fields and orange groves. The Ibero-American Confederation of Labour Inspectors also denounces, in an observation dated 26 May 2000 on the same Convention, a progressive deterioration in the system and resources of labour inspectors: inadequate staff numbers, non-existent work documents and wage discrimination compared with the inspectors of other state inspection units responsible for fiscal supervision. The Government is requested to provide details on the number and geographical distribution of labour inspectors working in agriculture and to supply information on any measures taken or envisaged to make available to them the material resources necessary for the performance of their duties such as, in particular, the transport means or facilities essential for visiting and inspecting agricultural undertakings, in accordance with *Article 21*, as often and as thoroughly as possible.

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In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Costa Rica, Côte d'Ivoire, Denmark, El Salvador, Finland, Guatemala, Madagascar, Malta, Republic of Moldova, Poland, Spain, Syrian Arab Republic, Uruguay.*

Information supplied by *France* and *Netherlands* and in answer to a direct request has been noted by the Committee.

Convention No. 130: Medical Care and Sickness Benefits, 1969

Bolivia (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

In reply to the comments that the Committee has been making for a number of years, the Government cites section 10 of the new Act on Pensions No. 1732 of 1996, covering benefits for invalidity as a result of occupational accidents, stating that all provisions contrary to this Act have been repealed. The Committee draws the Government's attention to the fact that benefits for employment injury and occupational diseases are considered under the Employment Injury Benefits Convention, 1964 (No. 121), and that the matters raised by the Committee in connection with Convention No. 130 relate solely to medical treatment and medical benefits of ordinary origin. In this regard, the Committee requests the Government to confirm that the legal provisions applicable to these branches of social security to which it referred in its previous reports (Legislative Decree No. 10173 of 1972, No. 13214 of 1975 and No. 14643 of 1977) are still in force. In addition, it trusts once again that the Government's next report will contain detailed information on the following matters raised in the Committee's previous comments.

1. *Part II (Medical care), Article 16, paragraph 1, of the Convention.* The Committee once again requests the Government to adopt the necessary measures to ensure that medical care is provided throughout the contingency, in accordance with this provision of the Convention.

Article 16, paragraph 3. The Committee recalls that, under section 23 of Legislative Decree No. 13214 of 1975, in the event of sickness certified by the responsible physician before the insured person is given sick leave, entitlement to the corresponding medical care for this sickness shall not be interrupted and may continue up to the legal limit of 26 weeks, or less if the medical treatment is terminated. The Committee trusts that the Government will indicate in its next report the measures that have been adopted to extend, in the case of beneficiaries who lose their status as insured persons, the duration of medical care for prescribed diseases recognized as entailing prolonged care, as required by this provision of the Convention.

2. *Part III (Sickness benefit), Article 21, in conjunction with Article 22.* The Committee once again draws the Government's attention to the fact that, in accordance with *Articles 21 to 23*, the rate of the sickness benefit shall be such as to attain a minimum level (60 per cent) for a standard beneficiary (a man with a wife and two children). *Articles 22 to 24* offer the Government various formulae that can be adapted to national practice for the determination of this minimum level. The formula envisaged in *Article 22* is intended to take into account systems of protection which, as is the case of the Bolivian social security system, provide benefits calculated on the basis of the beneficiary's former earnings. The Committee recalls in this respect that, in view of the fact that Legislative Decree No. 13214

of 1975, and section 81 of the Social Security Code, as amended, envisage a maximum amount for the rate of benefit and for the earnings taken into account for its calculation, the percentage of 60 per cent provided for in the Convention must be calculated with reference to a standard beneficiary whose earnings are equal to the wage of a skilled manual male employee (*Article 22, paragraph 3*). The information requested under the terms of *Article 22* of the Convention and, in particular, relating to the wage of a skilled manual male employee, is merely intended to permit comparison of the rate of benefit paid under the national legislation with the minimum rate established by the Convention. In these conditions, the Committee once again hopes that the Government will be able to take the necessary measures to provide the information required in the report form adopted by the Governing Body on Convention No. 130, and particularly the information on the wage of a skilled manual male employee, determined in accordance with *paragraph 6 or 7 of Article 22*, the amount of the sickness benefit paid to such a skilled worker, and the maximum level of wages subject to contributions.

3. *Article 26, paragraph 1* The Government states in its report that sickness insurance benefit is provided for 52 weeks and, for chronic illnesses, this period may be extended by the Ministry of Health. With regard to cash benefit, the subsidy for temporary incapacity is provided for 52 weeks at a rate that is equivalent to 75 per cent of the wage that is subject to contributions. The Committee once again emphasizes that section 30 of Legislative Decree No. 13214, of 1975, establishes that the common sickness subsidy commences from the fourth day of incapacity, with a maximum duration of 26 weeks, which can be extended for another 26 weeks if by doing so it is possible to avoid the status of invalidity. The Committee recalls that this requirement is not authorized by *Article 26* of the Convention, which provides that sickness benefit shall be granted throughout the contingency, provided that the grant of benefit may be limited to not less than 52 weeks in each case of incapacity. In these conditions, the Committee once again reminds the Government of the need to harmonize the provisions of the legislation that is in force with those of the Convention.

4. In previous comments, the Committee had referred to the possibility of having recourse to the technical assistance of the Office to resolve difficulties arising out of the application of the Convention. In addition, the Government had referred to a structural reform of social security in Bolivia. As so many years have passed since these matters were first raised concerning the application of the Convention, the Committee trusts that the Government will provide a detailed report in which it will take fully into account the matters that have been raised in order to give full effect to the Convention and that it will not hesitate to have recourse to the technical assistance that can be provided by the Office to assist its efforts to apply the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Costa Rica (ratification: 1972)

The Committee takes note of the Government's report. It notes the adoption on 17 December 1996 of the Health Insurance Regulations, which supersede the Sickness and Maternity Regulations of 1 December 1942 among other provisions. Further to its previous comments, the Committee notes with satisfaction that under sections 14, 15, 17 and 58 of the Health Insurance Regulations, the worker's wife and children are entitled to medical care throughout the contingency and the worker keeps the entitlement to medical care for the six months following the date on which he ceased to be an insured person in the case of diseases requiring prolonged care, in accordance with *Article 16, paragraphs 1 and 3, of the Convention*.

The Committee refers to other matters in a request addressed directly to the Government.

Venezuela (ratification: 1982)

The Committee notes the information supplied by the Government in its reports on Conventions Nos. 102, 121, 128 and 130. It understands, moreover, that the reforms to the health and pension systems which were envisaged have not been implemented, as the new Government has decided to conduct a global re-examination of the matter. The Committee therefore hopes that the Government's next report will contain full information on all measures taken or envisaged subsequent to this examination and that, in this context, due account will be taken of the obligations arising from ratification of the Convention, and particularly the following provisions which have been the subject of its comments for many years: *Articles 10 and 19* (read in conjunction with *Article 5*) (scope of the insurance); *Article 13* (specification in legislation of the medical care that shall be provided for the persons protected); *Article 16, paragraph 1* (duration of medical care); *Article 16, paragraphs 2 and 3* (continuation of medical care where a beneficiary ceases to belong to the categories of persons protected); *Article 22* (read in conjunction with *Article 1(b)*) (level of sickness benefit); *Article 28, paragraph 2* (suspension of sickness benefit).

[The Government is asked to report in detail in 2001.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Costa Rica, Czech Republic, Germany, Slovakia*.

Information supplied by *Denmark* in answer to a direct request has been noted by the Committee.

Convention No. 131: Minimum Wage Fixing, 1970

Bolivia (ratification: 1977)

The Committee notes the information provided by the Government in its report relating to the previous observation.

The Committee notes the Government's statement that, although Supreme Decree 21060 of 29 August 1985 guarantees the fixing of the minimum wage through collective bargaining between employers and workers, in practice the "national minimum wage" is established each year by the Government by means of a Supreme Decree, for both the public and the private sectors, and the amount is considered to be the limit below which wages cannot be fixed. The Committee notes that, in accordance with section 23 of Supreme Decree 23093 of 16 May 1992, which provides for wage increases, in the private sector such increases are to be negotiated directly in each enterprise. The Committee requests the Government to indicate whether or not this provision repealed section 62 above of Supreme Decree 21060 of 29 August 1985. Furthermore, the Committee also notes that, according to the Government, in the private sector the annual setting of the national minimum wage serves as a basis for the adoption of higher minimum wages which, to distinguish them from the former, may be called "institutional

basic wages". These wages are fixed on the basis of machinery and specific factors in each sector of work and on the production capacity of each production unit. Taking into account the above information, the Committee recalls that when a member State ratifies a Convention, it is under the obligation to adopt the necessary measures to give effect to its provisions. The Convention provides in *Article 4, paragraph 2*, for full consultation with representative organizations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned for the fixing and adjustment of minimum wages.

The Committee recalls that, since its first comments on the application of this Article of the Convention, it has been requesting the Government to adopt the necessary measures to ensure full consultations with the representative organizations of employers and workers. The Committee set up by the Governing Body to examine the representation made by the Confederation of Private Employers of Bolivia (*Official Bulletin*, Vol. LXVIII, 1985, Series B, Special Supplement 1/1985) alleging non-observance of the Convention, with reference to the consultations which must be held, reiterated that the Government should adopt appropriate measures to ensure such consultations. The Committee has continued to make this request. However, the Committee regrets to note that the Government has not taken any measures in this respect, and indeed has confirmed in its latest report that the machinery in force for the fixing of wages does not appear to involve the consultations required by *Article 4, paragraph 2, of the Convention*. The Committee therefore urges the Government to take the necessary measures and to hold full consultations with representative organizations of employers and workers concerned when determining the level of minimum wages and to provide information on the measures adopted in this respect.

The Committee notes the information concerning the elements taken into consideration in determining the level of minimum wages, in accordance with *Article 3* of the Convention. The Committee notes the Government's statement that from the social and juridical perspective, the minimum wage is understood as the vital support of a worker enabling him to meet his basic subsistence needs. The Committee would be grateful if the Government would indicate the manner in which "basic subsistence needs" are assessed, or on the basis of which minimum subsistence products such needs are determined.

The Committee is raising in a direct request other points relating to the Convention on which it has not received a reply from the Government.

[The Government is asked to report in detail in 2001.]

Libyan Arab Jamahiriya (ratification: 1972)

The Committee notes the information provided by the Government in reply to the issues raised in its previous direct request.

The Committee notes that Act No. 31 of 1994 respecting the public service, employment and the labour force, permitting recruitment under an employment contract in the public service and the private sector, was repealed in 1999 and that all the parties engaged in work are therefore governed by the provisions of the Wages Act No. 15 of 1981. The Government states in its report that this Act applies to all national workers, whether they are employed in the public service or in public companies and enterprises

and that the minimum wages increase in accordance with the provisions of the above Act.

Article 3 of the Convention. Section 1 of Act No. 15 of 1981 provides that the wage system for national workers "shall establish the principle of equal wages for equal work and equal responsibilities, while being designed to respond to the fundamental needs of workers covered by the system and to grant an annual increase according to the level of output and production. The wage shall be a function of the established output rates, all of which shall be in conformity with the general principles and rules which shall be determined in the regulations issued under the present Act". In view of this provision, the Committee has been requesting the Government for many years to provide information on the elements taken into consideration to determine the *level* of minimum wages applicable to the workers covered by Act No. 15 of 1981. It therefore requests the Government to provide this information and copies of any regulations adopted under section 1 of the above Act.

Article 4. With regard to the determination of minimum wages, the Committee notes that section 4 of Act No. 15 of 1981 provides that the "wages of all national workers in bodies governed by the provisions of this Act are established in Schedule 1, supplemented by any increments, benefits and other financial emoluments due by virtue of the present Act and the regulations and orders issued under this Act". In section 7, the Act provides that "without prejudice to the provisions of section 4, the People's General Committee shall issue regulations and decisions respecting wages and schedules determining these wages for workers in bodies, institutions, services, societies, public establishments and similar units covered by the provisions of the present Act". The Committee has also been requesting the Government for several years to indicate whether the machinery for the determination of minimum wages which is in force provides for a method for the adjustment of wages from time to time and the participation in this machinery of the representative organizations of workers and employers. The Committee therefore hopes that the Government will provide information on the frequency with which minimum wage rates are adjusted and on the participation of organizations of employers and workers in wage-fixing machinery.

Article 5 and Part V of the report form. The Committee notes that the technical commission will transmit the executive decisions respecting the new administrative structure, in accordance with the decision of the People's General Congress, which were adopted in March 2000. In addition to this information, the Committee hopes that the Government will provide information concerning the adoption of the necessary measures to ensure observance of the provisions of the Convention, with an indication of the minimum wage rates in force and extracts of the reports of the inspection services on the application and observance of minimum wage rates.

Portugal (ratification: 1983)

With reference to its previous comments, the Committee notes with satisfaction the publication of Act No. 45/98, of 6 August 1998, which repeals section 4(1)(a) of Act No. 69A/87, as amended, thereby abolishing the minimum wage for young persons under 18 years of age, which could be 25 per cent lower than the established minimum wage.

The Committee also notes the new observations made by the General Confederation of Portuguese Workers (CGTP-IN).

1. The Committee notes that, according to the CGTP-IN, despite the fact that the National Constitution and *Article 3 of the Convention* provide that in determining the level of minimum wages account shall be taken first of social factors and then of economic criteria, in practice economic criteria prevailed in the adjustment of the minimum wage. In this respect, the CGTP-IN emphasizes that, in determining the level of the minimum wage, consideration was not given to the general level of wages in the country nor the living standards of other social groups, and that the minimum wage policy has been converted into a method of controlling and limiting wages and has ceased to be effective through the failure to adjust it to the average increase in wages (the ratio of the minimum wage to the average wage fell from 59.4 per cent in 1990 to 52.7 per cent in 1997), despite the increased stability over the past three years. In 1998, there appeared to be a new calculation of the minimum wage after an increase of 5.3 per cent in the average wage, according to official estimates, and 3.9 per cent in the minimum wage. The CGTP-IN adds that the rate of increase of the minimum wage was lower on average than that of the average living standard of the population during the 1990s, with the exception of 1993 (a year of economic recession). The CGTP-IN argues that these figures show the inequalities which exist in the distribution of the fruits of production between low wage-earners (who earn the minimum wage) and the average earnings of other categories of workers. The CGTP-IN considers that this situation is contrary to the objectives of the Convention, since the concept of "excessively low wages" has to be considered in the framework of the average wage and the earnings of other categories of workers. Secondly, the Committee notes the statement by the CGTP-IN that the minimum wage has been used as an instrument of wage moderation under the pretext that it is necessary to prevent a domino effect leading to rises in other wages. In this respect, it is significant that the Inter-Ministerial Working Group on the Minimum Wage omitted to consider in its reports on the adjustments for 1999 and 2000, as a development hypothesis, the level of inflation in relation to productivity (this criterion generally means that when real wages rise in relation to productivity, they retain the same share in the distribution of national income), and only considered lower estimates of the above figures. Thirdly, the Committee notes that, according to the CGTP-IN, the predominance of economic criteria in social dialogue agreements has been confirmed, for example in the Strategic Dialogue Agreement of 1996, which was not signed by the CGTP-IN and under the terms of which "the minimum guaranteed remuneration, in view of its social function and its contribution to employment promotion, will be adjusted annually in relation to the inflation rate of market goods and the rise in productivity in the most visible sectors of the economy, with a view to ensuring that increases are more rapid than for the average wage".

The Committee also notes that, according to the CGTP-IN, a positive aspect is that the adjustment of the minimum wage for 2000 took place before the end of 1999 and was published in the relevant legislation (Legislative Decree No. 573/99 of 30 December). The CGTP-IN requested the Government to do the same before 1 January each year at the time of the coming into force of the minimum wage so that workers and employers are aware of the rate which will be applied.

The Committee notes the CGTP-IN's statement that the system of labour penalties was revised in 1999 (Act No. 118/99, of 11 November), which has implications for the penalties applicable for failure to comply with the minimum wage legislation.

2. The Committee notes that in its reply the Government indicates that the annual rate of increase of the minimum wage between 1990 and 2000 was higher than the rise in consumer prices (except in 1993 and 1994) and also higher than the annual adjustment of wages determined by collective agreement (except in 1990, 1993 and 1994), despite being below the annual rise in real average wages in the labour market. The Committee notes the Government's indication that workers paid the minimum wage have seen their purchasing power rise and that, since 1995, this purchasing power has followed the same curve without interruption. The Committee notes also that in recent years the difference between the rise in the minimum wage and the rise in the average wage has decreased and that the rates of wage increases determined by collective agreement have been rather lower than those of the minimum wage.

The Committee also notes the Government's statement that the adjustment of the minimum wage in recent years has complied with the guidance provided in this Convention and the Strategic Dialogue Agreement of 1996. Nevertheless, the Inter-Ministerial Working Group on the Minimum Wage, when calculating the adjustment of the minimum wage, did not take into account the inflation rate for market goods or the rise in productivity in the most visible sectors of the economy, as envisaged by the above agreement, which was rejected by the CGTP-IN, for reasons of practical difficulties in applying such criteria, as well as the expected fluctuations in such indicators. As a result, in view of the expected rise in inflation and productivity, the increase in the minimum wage has been above the average rise in wages determined by collective agreement. The adjustments made since 1995 have totally covered the rise in the consumer price index and a proportion (generally around two-thirds) of the expected rise in productivity. Between 1997 and 1999, this rise was generally higher, due to the fact that the growth of employment was greater than expected, which resulted in a real increase in the minimum wage which, for three years, matched the total increase in labour productivity.

The Committee takes note of the information provided by the Government in respect of the comments by the CGTP-IN and hopes that the Government will continue to provide information on the measures adopted with regard to the determination of minimum wages and the maintenance of the purchasing power of such wages.

The Committee refers to its direct request in which it is raising other matters relating to the application of the Convention.

Spain (ratification: 1971)

The Committee notes the observations made by the General Confederation of Workers (UGT), which were forwarded to the Government on 14 February 2000, although the latter's comments have not yet been received. The Committee also notes the observations of the Democratic Confederation of Labour (CDT) of Morocco and the Government's reply to these observations.

1. With reference to the observations made by the UGT, the Committee notes that, according to the UGT, when determining the inter-occupational minimum wage (SMI), the Government only takes into consideration the consumer price index, without taking into account a series of other factors, such as average national productivity, the increased share of labour in the national income and the general economic situation, as established in *Article 3, paragraph (b), of the Convention*. The Committee also notes that, according to the UGT, the European Committee on Social Rights, the body responsible for the

application of the European Social Charter, considered in 1996 that the SMI determined by the Government was once again unjust and inadequate, since it only amounted to 36 per cent of the average gross wage and was approximately 24 points below the level considered appropriate in the Charter (60 per cent of the average net wage).

The Committee notes that, taking into account these indications, the UGT and another workers' organization requested the Government to increase the SMI in 2000. Nevertheless, the Government did not grant the request and increased the SMI by a percentage that was different from the level proposed by the above organizations.

The Committee recalls that, as it pointed out in its 1992 General Survey on minimum wages, it has always emphasized the respect which is required for the fundamental principle of consultation and the participation of employers' and workers' organizations in the application of minimum wage-fixing machinery. The Committee however recognizes that consultation is only one stage in the decision-making process, as it indicated in its 2000 General Survey on tripartite consultation.

The Committee hopes that the Government will provide its comments as rapidly as possible on the UGT's allegations.

2. With reference to the observations made by the CDT of Morocco concerning events in El Ejido (Almeria), the Committee notes that according to this organization, the Spanish Government should undertake to establish a system of minimum wages applicable to all groups of employees whose terms and conditions of employment are such that they require the safeguard of such protection.

The Committee notes the Government's statements that, in terms of wages, Moroccan workers are covered in the same way as other workers by the corresponding collective agreement and that all workers who are not covered by a collective agreement are covered by the inter-occupational minimum wage which, in 2000, is set at 76,680 pesetas a month (equivalent to 4,258 dirhams), and that all Moroccan workers for any complaint respecting wages or general conditions of work can have recourse to the labour courts which are competent in such matters under the same conditions as Spanish workers.

The Committee hopes that the Government will continue to provide information on any developments in this respect.

Uruguay (ratification: 1977)

The Committee notes the Government's report as well as the extensive comments submitted by the Inter-Trade Union Assembly-Workers' National Convention (PIT-CNT).

Consideration of the needs of workers and their families in determining minimum wages (Article 3 of the Convention)

The Committee recalls that in its previous comments it referred to the provisions of Act No. 10449 on wages boards mentioned by the Government, considering that although they attempted to meet the workers' physical, intellectual and moral needs, no reference is made to the needs of workers and their families as provided in Article 3 of the Convention. The Committee therefore requested the Government to indicate the measures taken to ensure that the needs of workers and their families are taken into

consideration for the purpose of minimum wage fixing and, more specifically, to indicate whether the minimum wage is calculated on the basis of a basket of staple goods and whether minimum education, health and housing costs are taken into consideration.

In reply to this request, the Government states that the system of wage fixing has ceased to apply integrally for macroeconomic reasons and that the general system provided for all workers, and included in Act No. 10499, is supplemented by decree to fix minimum wages for rural and domestic workers and the so-called minimum national wage. It adds also that these macroeconomic reasons are determined on the basis of the fundamental target of reducing inflationary figures. The Government also states that 80 per cent of national education is provided without charge and that all workers in the private sector have health insurance (D.I.S.S.E) which, by means of contributions from both contracting parties, permits access to health services, without prejudice to amenities under the public health.

In its observations, the PIT-CNT indicates that the great majority of workers consider that no minimum wage exists in terms of the criteria laid down in this provision of the Convention and that when there is no collective agreement the minimum wage applicable is a minimum national wage fixed unilaterally by decree. It also indicates that it can be deduced from the Government's statements that there is incompatibility between the macroeconomic measures taken to reduce inflation figures and the fixing of minimum wages by free and voluntary collective negotiation. With reference to the failure, for macroeconomic reasons, to apply the wage-fixing system integrally to all workers, it indicates that this government approach must be considered in the light of the responsibility of the State to encourage collective negotiation. The PIT-CNT considers that the Government not only fails to meet the objectives of the collective bargaining system established and in force at national and international level, but that it has ceased to encourage it, arguing that macroeconomic reasons and plans or stabilization policies have involved restrictions on fixing minimum wages by negotiation.

The Committee notes this information and indicates its concern at the Government's statement to the effect that the fixing of wages by collective bargaining has ceased to apply integrally for macroeconomic reasons and more specifically for the particular objective of reducing inflation levels. The Committee also observes that the Government's reply refers solely to general aspects of education and national health and notes once again that it does not reply to the specific question of how the basic needs of workers and their families are considered in relation to the national wage level, the price of staple goods, social security benefits and the relative living standard of other social groups, nor does it mention the measures taken in practice. The Committee recalls that minimum wage fixing entails providing wage earners and their families with the necessary social protection as regards minimum permissible wage levels as set down in *Paragraph 2 of Recommendation No. 135*, and in *Article 3 of the Convention*. The Committee therefore urges the Government to adopt the necessary measures so that minimum wage-fixing machinery takes into account, in addition to other economic factors, the needs of workers and their families.

No consultation with the representatives of employers and workers concerned in the fixing of minimum wages (Article 4(2))

For a number of years, the Committee has noted that the Government follows a practice of unilateral determination of the inter-occupational minimum wage and the minimum wages of rural and domestic workers and has reminded the Government on many occasions that provision must be made by the ratifying State, in connection with the establishment, operation and modification of wage-fixing machinery, for full consultation with the representative organizations of employers and workers concerned, or, where no such organizations exist, representatives of the employers and workers concerned.

In its comments, the Government declares that: (a) minimum wages refer basically to minima applicable only for the calculation of contributions to social security, professional salaries ("aranceles profesionales") etc.; (b) domestic and rural workers are excluded from the wage-fixing system due to the lack of sufficiently representative trade union organizations with which this type of wage can be negotiated; and (c), it has substantially encouraged bargaining by branch of activity and by enterprise without State intervention in order to improve the competitiveness of sectors and undertakings. The Government also refers to its intention initially to prepare draft legislation on collective bargaining which would include the establishment of a tripartite commission for collective bargaining to fix wages of sectors where such bargaining is lacking, and for the minimum national inter-occupational wage, thus complying with the provisions of the Articles. The Government states, however, that this initiative was later abandoned due to disagreement from the employment sectors involved.

The PIT-CNT indicates in its comments that, first, in all cases where there is no collective agreement, the minimum wage applicable is the minimum national wage fixed by decree and without consultation with the workers' and employers' organizations, and which the Government claims refers basically to minima which apply only for contributions to social security, professional salaries ("aranceles profesionales"), etc. This affirmation by the Government reveals that the minimum wage is so little based on reality that its inadequacy renders it meaningless. Secondly, the PIT-CNT indicates that the Government justifies the non-applicability of the wage-fixing system by collective bargaining for rural and domestic workers, invoking not only the argument of macroeconomic reasons but also the "absence or virtual absence" of trade union organizations of these workers, which prevents collective bargaining. In regard to the third point relating to the Government's intention to prepare the draft legislation, the PIT-CNT adds that the lack of consensus between the workers' and employers' trade union organizations originates in the attempt of the employers' organizations to lower the limits imposed by international labour agreements on basic questions in relation to terms and conditions of employment. On these comments, the PIT-CNT reiterates that not only has the Government failed to encourage collective bargaining but that it has attempted to extrapolate the variables of economic adjustment to the employment world with the result that there is neither bargaining nor protection of basic rights. It also adds that the State has formulated a series of restrictions on macroeconomic grounds without these having been the subject of consultation with the representative organizations concerned.

With regard to the *consultation of representative organizations of employers and workers in minimum wage-fixing machinery*, the Committee recalls that under the provisions of *Article 4(2)*, of the Convention, not only is consultation compulsory but it should also be effected at the time of establishing the scope of the minimum wage system to be established as well as in applying the machinery for fixing minimum wages.

In regard to rural and domestic workers, the Committee notes that for several years the problem has persisted generally of unilateral fixing by the Government of the minimum wage of these workers, on the assumption that there are no trade union organizations sufficiently representative of them. According to the PIT-CNT, however, such organizations do exist even though they lack State protection in the exercise of their rights. In this respect, the Committee notes that, according to the PIT-CNT comments, in 1990 the percentage of workers covered by collective bargaining amounted to 88 per cent of the total number of workers whereas in 1997 this percentage had dropped to 23 per cent. Citing a study on the new labour relations model, the PIT-CNT indicates that "the withdrawal of the Ministry of Labour from bargaining and the lack of approval of agreements is a disincentive to bargaining at the level of the branches". The Committee expresses the hope that the Government will shortly be in a position to indicate the measures adopted to guarantee *full consultation with the representatives of employers and workers concerned* in fixing the national minimum wage and the minimum wages of rural and domestic workers. Such measures should include protection of the trade union organizations and the encouragement of collective bargaining.

The Committee hopes that the Government will indicate in detail: (a) what are the components considered in fixing minimum wages for workers, and (b) how consultations have been carried out with the workers' and employers' organizations, including those in the agricultural sector and of domestic workers.

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In addition, requests regarding certain points are being addressed directly to the following States: *Bolivia, Lithuania, Niger, Portugal, United Republic of Tanzania*.

Convention No. 132: Holidays with Pay (Revised), 1970

Iraq (ratification: 1974)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

1. The Committee has taken note of the Government's last report and of the information given in it in answer to its previous observation. It notes with regret that the Government once again confines itself to repeating the information provided in earlier reports. The Committee trusts that the Government will provide fuller and more detailed information in its next report on the following points on which the Committee has commented for many years.

2. With regard to the need to bring Act No. 24 of 1960 concerning the public service into conformity with the provisions of the Convention:

(a) *Article 2, paragraphs 2 and 3, of the Convention*. The Committee notes that the Government did not indicate in its first report whether it intended to avail itself of the possibility provided under paragraph 2 of the Convention of excluding public service

employees from the application of the Convention. The Committee also notes that the Government has for a number of years simply stated, without providing any other information, that in the view of the competent authority (the Ministry of Finance), the Convention is not applicable to officials in the public service covered by the provisions of Act No. 24 of 1960. In this regard, the Committee recalls that the possibility of excluding from the application of the Convention limited categories of employed persons carries with it, under the terms of paragraph 3, an obligation to specify the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories. The Committee therefore requests the Government to indicate how it proposes to apply this provision of the Convention.

- (b) *Article 9, paragraph 1.* The Committee notes that sections 43(3) and 48(3) of Act No. 24 of 1960 allow officials to accumulate up to 180 days of leave, and other public servants 100 days of leave. The Committee draws the Government's attention to the fact that, under the terms of this Article of the Convention, a part of the holiday consisting of at least two uninterrupted working weeks must be taken no later than one year, and the rest of the holiday no later than 18 months, from the end of the year in which the holiday entitlement arises.
- (c) *Article 11.* The Committee notes that, upon termination of the employment relationship following dismissal or resignation (sections 45(1) and 49 of Act No. 24 of 1960), officials do not appear to have any paid leave entitlement proportional to their length of service or any entitlement to financial compensation. The Committee notes that the same principle applies to school employees who terminate their service during the first half of the school year (section 48(10) of Act No. 24 of 1960). The Committee wishes to recall that, under the terms of the present Article of the Convention, any employed person who has completed a minimum period of service should, on termination for any reason, receive a holiday with pay proportional to the length of service for which he or she has not received such a holiday, or compensation in lieu thereof, or the equivalent holiday credit.

3. With regard to the need to bring the leave provisions contained in the Labour Code (Act No. 71 of 1987) into conformity with the Convention:

- (a) *Article 6, paragraph 1.* There appear to be no national laws or regulations giving effect to this provision of the Convention, under which public and customary holidays are not counted as part of the three weeks' annual holiday with pay prescribed in Article 3, paragraph 3. In this respect, the Government has indicated that, in the absence of a relevant provision in the Labour Code, section 150 of the Code provides that the provisions of other laws and of ratified Arab and international labour Conventions shall apply. The Committee wishes to call the Government's attention to the fact that the provisions of the Convention are not self-executing. It would therefore be better to bring national legislation explicitly into harmony with the provisions of the Convention in order to avoid any uncertainty regarding the state of the law.
- (b) *Article 8, paragraph 2.* The Committee notes that, under the terms of article 69(2) of the Labour Code, only six continuous days of leave must be taken at one time when the leave has been divided. The Committee recalls that, under Article 8, paragraph 2, when the annual holiday with pay is broken into parts, one of the parts must consist of a minimum of two uninterrupted working weeks, unless otherwise provided in an agreement between the employer and the employee.
- (c) *Article 9, paragraph 1.* The Committee notes that, in the event of the deferral of a part of the holiday under the conditions set out in section 73(3) of the Labour Code, the worker is entitled to compensation. In this respect, the Committee reiterates that this provision is not in conformity with Article 9, paragraph 1, of the Convention.

according to which the remainder of the holiday should be granted and taken no later than 18 months from the end of the year in which the holiday entitlement arises.

4. The Committee trusts that the Government will take the necessary measures in the near future to bring all its legislation into conformity with the fundamental provisions of the Convention and asks the Government to keep the ILO informed of any relevant developments.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cameroon, Czech Republic, Ireland, Switzerland.*

Information supplied by *Luxembourg* and *Sweden* in answer to a direct request has been noted by the Committee.

Convention No. 133: Accommodation of Crews (Supplementary Provisions), 1970

Liberia (ratification: 1978)

The Committee notes that the Government's report has not been received. It must, therefore, repeat its previous observation which reads as follows:

The Committee notes that since the entry into force of the Convention in 1991, the Government has never communicated a first report. The Committee urges the Government to provide forthwith a detailed report in conformity with the report form adopted by the Governing Body.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Côte d'Ivoire, Nigeria, Poland, Ukraine, United Kingdom.*

Convention No. 135: Workers' Representatives, 1971

Costa Rica (ratification: 1977)

The Committee notes the Government's report.

The Committee recalls that it noted in its previous observation that the number of protected trade union representatives was restricted (section 367 of the Labour Code (one leader for the first 20 union members and one for each subsequent 25 workers, to a maximum of four)) and considered that protection should be extended to a greater number of representatives, apart from securing protection generally for all workers against acts of anti-union discrimination.

The Committee notes the Government's statement that it hopes to be in a position to provide information in its next report on the progress made in extending employment protection to a higher number of workers' trade union representatives. In this respect, the

Committee requests the Government to provide information in its next report on any progress made to this effect.

The Committee notes that the Trade Union of Employees of the Ministry of Finance (SINDHAC) and the Costa Rica Transport Workers' Union (SICOTRA) have made observations on the application of the Convention and requests the Government to provide its comments in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burundi, Estonia, Lesotho*.

Information supplied by *Cyprus* in answer to a direct request has been noted by the Committee.

Convention No. 136: Benzene, 1971

A request regarding certain points is being addressed directly to the *Syrian Arab Republic*.

Convention No. 137: Dock Work, 1973

France (ratification: 1977)

The Committee notes with regret that the Government's report has not been received for the fourth consecutive year. It must therefore repeat its previous observation, which read as follows:

1. The Committee notes the information supplied by the Government and the comments of the National Association of Dock Work Industries in French Ports (UNIM). It notes in particular the adoption of Act No. 92-496 of 9 June 1992 amending Act No. 47-1746 of 6 September 1947 on the organization of dock work in sea ports, and the conclusion of the national collective agreement on dock work in 1993-94. As a result of the above reforms, most professional dockworkers who used to do casual work are now employed under a monthly scheme by cargo-handling companies on the basis of an indefinite contract. The Government also indicates that some professional dockworkers are still employed on a casual basis but that this scheme will gradually disappear since no new registration cards are being issued.

2. The UNIM considers that the Convention is obsolete in view of technological developments in the port industry and the reforms in the organization of work in the port sector. It draws attention in particular to the provisions of the French legislation which restrict both the choice by cargo-handling companies of the staff they employ and the procedure for economic terminations.

3. The Committee refers to the tripartite meeting on social and labour problems caused by structural adjustment in the port industry held in Geneva in 1996 and recalls that one of the meeting's conclusions was that the ILO must continue to promote the ratification and application of the relevant international labour standards. The Committee would be grateful if the Government would continue to provide information on the application of the provisions of the Convention, in the light of the results of the above meeting, and the comments made by the UNIM. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Romania, United Republic of Tanzania*

Convention No. 138: Minimum Age, 1973

Costa Rica (ratification: 1976)

The Committee notes the information provided by the Government in its reports and the comments made by the Trade Union of Employees of the Ministry of Finance (SINDHAC), the Transport Workers Union of Costa Rica (SICOTRA) and the Rerum Novarum Confederation of Workers (CTRN). These comments were forwarded to the Government on 22 September 2000, although no reply has been received from the Government. While awaiting the Government's reply, the Committee refers to the comments made by the above workers' organizations in this observation.

Article 1 of the Convention, in relation with Part I of the report form. The Committee notes that, according to the comments made by the above trade unions and confederation, some 147,087 children and young persons between the ages of 15 and 17 years work, of whom 66,762 are under the age of 15. The Committee also notes that the hours worked by the children and young persons vary according to their age as follows: the age group from five to 11 years works for seven hours a week; the age group from 12 to 14 years works for 24 hours a week; and the 15 to 17 year age group works for 39 hours a week.

Furthermore, according to this information, the economically active population of children and young persons includes a high percentage of seasonal workers for the coffee and sugar cane harvests and other agricultural activities, with their levels of employment declining during the school term. Nevertheless, almost half of the economically active children and young persons work throughout the year, that is between seven and 12 months a year, during a reference period from July 1997 to June 1998.

The Committee also notes the information provided by the Government that one of the principal outcomes following the evaluation of the National Plan for the Eradication of Child Labour was the adoption of administrative directives concerning the participation of children and adolescents in the coffee harvest, as well as the registration of persons under 15 years of age. The Committee requests the Government to provide information on the results of these measures.

The Committee notes in particular the information supplied by the Government in the document entitled *Hazardous and unhealthy activities and work processes for workers over 15 and under 18 years of age*. The document indicates that the number of young persons between five and 17 years of age engaged in economic activities amounts to 13.1 per cent of the population. Some 68.8 per cent of the population of children and adolescents in the country are engaged in regular work, principally in the agricultural sector, industry, commerce and construction. According to the data of the National Insurance Institute, some 4,191 work-related accidents to minors were reported in 1997.

principally in the sectors referred to above. According to the information provided by the workers' organizations, the majority of young persons who work (80 per cent) are active in areas of low productivity, such as the traditional rural sector, the urban informal sector and domestic service. The above organizations indicate that only 20 per cent of young persons who work are engaged in the modern sector as employees.

With regard to compulsory school attendance, the Government indicates that, in accordance with the provisions of sections 78 and 92 of the Code of Children and Young Persons, and article 78 of the political Constitution of Costa Rica, children are guaranteed a minimum level of education until the age of 15 years on average. Nevertheless, according to the Government, around 15 per cent of the population of between five and 11 years of age, about 20 per cent of the population of between 12 and 14 years of age and 42.6 per cent of the population aged from 15 to under 18 years who are engaged in work do not attend school. The situation is worse in the rural sector. The comments made by the above workers' organizations indicate that the levels of school drop-out are extremely high. Indeed, according to this information, some 52 per cent of all young persons who are engaged in work abandon school, while some 47 per cent of those who both work and study are behind in their education.

The Committee notes the comment made by the workers' organizations concerning the problem of "migrant child labour". According to the data provided, 12 per cent of the migrant population from Nicaragua (over 102,108 Nicaraguan nationals in Costa Rica) is aged between 12 and 19 years. This group of children and young persons is, according to the above comments, more vulnerable than nationals of Costa Rica when entering the labour market, taking into account the conditions to which they are exposed.

The Committee also notes the information contained in the second periodic report submitted by the Government to the 595th and 596th meetings of the Committee on the Rights of the Child (CRC/C.65/Add.7), held in January 2000. In this report, the Government indicates that:

the entry of minors into the labour market takes place essentially at two points: at the age of ten years and at the age of 13. However, most children enter the labour market between the ages of 13 and 15;

out of the total number of minors working in 1995, only 51.4 per cent were receiving regular schooling, the remaining 48.6 per cent having completed no more than primary school;

of the minors at social risk, 45.5 per cent have no activity. They wander around the streets of urban areas, where they are detained or referred to the Reception and Referral Centre of the Ministry of Justice. The formal and informal activities they do take up inevitably place them at risk, either because the jobs are considered dangerous (building, agriculture, fishing, etc.) or because they require little skill and are poorly paid (domestic service, peddling, etc.).

The Committee expresses its concern at the number of girls and boys who are in the labour market in violation of the national legislation, the number of girls and boys who are engaged in hazardous and unhealthy activities and who are at risk in the streets. The Committee also expresses its concern at the high percentage of school drop-outs and at the fact that, as indicated by the above workers' organizations, these figures show that entry into the labour market has a negative impact on compliance with compulsory

schooling. The Committee hopes that the Government will take the necessary measures on an urgent basis to resolve these serious problems and requests it to provide information on the measures adopted and their results.

General minimum age. In its previous comments, the Committee referred to the amendment of the Labour Code (Act No. 7680 of 1997), which in sections 88 and 89 would set the minimum age for work at 12 years of age. The Committee noted that the Bill was vetoed by the Executive on 24 July 1997 on the grounds of the unconstitutionality of these sections, that it was returned to the legislature, and that the process of amending the Labour Code to bring it into conformity with the Convention is still continuing.

The Committee notes the information provided by the Government to the effect that the Code of Children and Young Persons (Act No. 7739 of 6 February 1990) constitutes the "— minimum legal framework for the comprehensive protection of the rights of young persons [...]. Provisions of any rank which provide them with greater protection or benefits shall prevail over the provisions of this Code". The Government also indicates that, in accordance with the principle of the non-retroactivity of legislation, unless provided to the contrary, all measures which are contrary to the Code, including those set out in bills awaiting examination or which have been vetoed, are tacitly repealed and in any case subordinate to the legislation which is in force. According to the Government, the minimum age for access to employment within the national legal system, in accordance with sections 78 and 92 of the Code of Children and Young Persons, is set at 15 years.

The Committee once again requests the Government to provide information on any progress made in the amendment of the Labour Code to bring it into line with the Code of Children and Young Persons and into conformity with the Convention.

Hazardous work. In its previous comments, the Committee referred to the measures which had been taken or were envisaged to determine, in consultation with organizations of employers and workers, the types of work or employment prohibited for persons under 18, in accordance with *Article 3, paragraph 2*, of the Convention. The Committee notes the information contained in the Government's report to the effect that the "National Plan for the Prevention and Progressive Elimination of Child Labour and the Protection of Young Persons at Work" envisages the preparation by the competent authorities of regulations governing activities considered to be hazardous or intolerable carried out by persons over the age of 15 and under the age of 18.

The Committee also notes the document prepared by the Occupational Health Council entitled *Hazardous and unhealthy activities and work processes for workers over 15 and under the age of 18*. This document identifies a series of occupations or work processes for which it is recommended that the employment of persons under 18 years of age should be totally prohibited. The Committee requests the Government to continue providing information on the measures which are taken with a view to the adoption of regulations governing these activities or processes. The Committee requests the Government to provide a copy of the text as soon as it is adopted. The Committee also recalls that *Article 3, paragraph 2*, provides that the types of employment or work which are likely to jeopardize the health, safety or morals of young persons under the age of 18 years shall be determined by national laws or regulations or by the competent authority, after consultation with organizations of employers and workers concerned.

where such exist. The Committee requests the Government to indicate whether the organizations of employers and workers concerned have been consulted.

The Committee notes Decree No. 11074-188 of May 1980 respecting the maximum limits for the manual transport of loads by women and men between 16 and 21 years of age and requests the Government to provide a copy of this Decree.

The Committee notes that the Code of Children and Young Persons provides in section 101 for financial penalties for violations of sections 88, 90-95 and 98 of the Code. The Committee requests the Government to indicate whether such penalties have been imposed, particularly for violations of section 94 respecting the types of work which are prohibited for young persons. In any case, the Committee wishes to emphasize that, in accordance with Article 3 of the Convention, the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years. The Committee has already noted that, in accordance with section 94 of the Code of Children and Young Persons, it is prohibited to engage "young persons" in unhealthy or hazardous work. However, section 2 of the above Code provides that "a young person is [...] any person over 12 years of age and under 18 years". The Committee therefore requests the Government to take the necessary measures to ensure that the national legislation gives effect to the provisions of Article 3 of the Convention by setting the minimum age for the admission of young persons to unhealthy or hazardous work at 18 years of age.

Exceptions as to light work. With reference to its previous comments, the Committee once again recalls that section 89 of the Labour Code permits young persons between the ages of 12 and 15 years to work a maximum of five hours a day. The Committee notes the information provided by the Government to the effect that the Code of Children and Young Persons establishes in section 92 a "prohibition to work" by persons under 15 years of age, which repeals the provisions of section 89 of the Labour Code for the reasons stated under the point *general minimum age*. The Government adds that the exceptions envisaged in Article 7 of the Convention, which permits as an exception the admission to employment of young persons under 15 years of age on light work, are at the limits of the national provisions which are in force.

Taking into account the statistical data provided by the Government, to which the Committee refers in this observation, concerning the number of young persons under 13 years of age who enter the labour market, the Committee recalls that exceptions to the requirement of the minimum age for work are only allowed in the case of light work under the conditions set out in Article 7 of the Convention, and only in the case of young persons as from 13 years of age. The Committee requests the Government to provide information on any progress achieved in relation to measures which have been adopted or are envisaged to bring the Labour Code into line with the Code of Children and Young Persons in order to give effect to the Convention.

Dominica (ratification: 1983)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee notes that the Government's report indicates that there has been no amendment to the national legislation on any of the points raised in the previous comments.

It recalls that the Government has been asked to give effect to several provisions of the Convention since its ratification. The Committee points out in particular that the minimum age for admission to employment or work, which was specified to be 15 years when Dominica ratified the Convention, has not been ensured in the national legislation.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, and supply information on any progress made on the matters that have been raised and which the Committee repeats once again in a request directly addressed to the Government.

France (ratification: 1990)

The Committee notes the information supplied in the Government's reports in reply to its previous observation.

Minimum age in the maritime sector. The Committee notes section 114 of the Maritime Labour Code (modified by Act No. 97-1051 of 18 November 1997) which provides that seafarers under 18 years of age should not work on boilers, water tanks, holds or in compartments where high temperature can be harmful to their health, as well as section 115 which sets the minimum age for working on board ship at 16 years of age. The Committee notes that new section 8 of the Maritime Labour Code expands the provisions of the General Labour Code regarding the apprenticeship of young seafarers. It further notes that these provisions will be adapted by a decree of the Council of State to facilitate the recruitment of young seafarers. The Committee requests the Government to indicate whether this decree has already been adopted and, if so, to forward a copy of it with the next report.

The Committee notes the statistics provided concerning young seafarers employed on board ship. It asks the Government to continue to supply information on the practical application of the minimum age in the maritime sector.

Minimum age for domestic employees. The Committee notes the Government's indication in its report that the employment of children from 14 to 16 years of age as domestic workers is extremely rare. Such cases are considered as illegal employment and are dealt with as such. The Committee requests the Government to provide information concerning such cases as well as the measures taken to ensure compliance with the relevant provisions of the Convention.

Enterprises involving artistic performances and modelling agencies. The Committee notes the information in the Government's report concerning a special committee which considers applications for individual authorizations for participation in performances or issues approvals to agencies holding licences allowing them to engage children without individual authorization. It notes that this committee, the sessions of which are attended by the different administrations concerned, works in most of the departments where its functions, in particular the frequency of meetings, are practically determined in accordance with the importance and the frequency of the cultural appearances which needs to employ children. The Committee also notes the Government's statement that this measure provided for by section L.211-7 of the Labour Code and rules which provide for the function of the committees guarantee the conditions of employment for the children in this field. However, it again recalls that *Article 8 of the Convention* allows exceptions to the prohibition of employment or work provided for in *Article 2*, for such purposes as participation in artistic performances only

when the competent authority grants an individual permit which prescribes the conditions in which employment or work is allowed. The Committee also recalls that ratification of a Convention entails the enactment of texts to give effect to the provisions of the instrument. In this regard, the Committee requests the Government to indicate the measures taken or contemplated to bring national texts into conformity with the aforementioned obligations under the Convention.

Ireland (ratification: 1978)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which reads as follows:

The Committee notes the information provided by the Government, especially the adoption of the new Protection of Young Persons (Employment) Act, 1996. It notes with interest that, under this Act, the minimum age for full-time work has been raised from 15 to 16 years of age. The Committee would draw the Government's attention to the possibility under *Article 2, paragraph 2, of the Convention* to declare a minimum age higher than that previously specified.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Kenya (ratification: 1979)

The Committee notes the information supplied by the Government in its report. It notes in particular that the Employment Act (Chapter 226) and the Employment (Children) Rules of 1977 will be revised in the framework of a general revision of labour legislation which will start in the near future with the assistance of the ILO and in consultation with the social partners. The Committee also notes that a Bill on children has been submitted to Parliament and is currently under examination. It requests the Government to supply information on the progress made in relation to draft general revision of the labour legislation as well as information on the work of Parliament in relation to the Bill on children.

The Committee requests the Government to supply further information on the following points.

Article 2 of the Convention. In its previous comments, the Committee has noted that a task force, appointed to review labour legal instruments, had decided to amend section 2 of the Employment Act so as to define a "child" as a person under 15 instead of 16 years of age, which would have the result of lowering the minimum age for employment or work under the Employment Act to 15 years. The Committee once again recalls that the Government specified 16 years as the minimum age for admission to employment or work under *Article 2, paragraph 1, of the Convention* at the time of ratification. If the Government amends the Employment Act as indicated, the above section would no longer be in conformity with the provisions of the Convention. Indeed, by virtue of *Article 2, paragraph 1*, member States, by ratifying the Convention, undertake the obligation to take the necessary measures in order to ensure that no person under the age specified is admitted to employment or work in any occupation. In addition, the Committee emphasizes that, in conformity with *Article 1*, member States undertake, when ratifying the Convention, the obligation to raise progressively the minimum age for admission to employment or work and not to reduce this age. The

Committee therefore once again requests the Government to take the necessary measures in order to maintain the legislative conformity with the Convention.

For many years, the Committee has been noting that, under the terms of section 25(1) of the Employment Act, read in conjunction with section 2 of the Act, the minimum age for admission to employment or work only applies to industrial enterprises. In its previous reports, the Government had indicated that it intended to amend the Act. To this effect, the Committee noted in its previous comments that the draft amendment to the Employment Act did not contain any provision to extend the application of the minimum age for admission to employment or work to all sectors of the economy. Moreover, it noted that a task force appointed to review the labour legal instruments was continuing its work. Consequently, the Committee once again hopes that this special group will take the necessary measures to extend the application of the minimum age for admission to employment or work to all sectors of the economy. It once again asks the Government to supply information on any progress made in this respect.

The Committee noted previously that the Ministry of Education was preparing draft legislation to make primary education compulsory. The Committee again expresses the hope that the Government will provide information on any developments in this respect.

Article 3. In its previous comments, the Committee noted that the national tripartite committee which is in charge of giving advice on the execution of the policy was in the process of constitution and that it would consult the organizations of employers and workers, as well as determine the types of work to be prohibited for minors less than 18 years because of the harmfulness to their health, their security or their morals. Therefore, the Committee again expresses its hope that this committee will take the necessary measures to ensure the respect for the principles of the Convention in the near future. It also asks the Government to supply information on any progress made in this regard.

Article 7. The Committee previously noted the Government's statement that it did not consider it time yet to pass legislation on the employment of children under 15 on light work. It recalls, however, that section 3 of the Employment (Children) Rules of 1977 already allows the employment of children with a prior written permission of an authorized officer. The only restrictions are that such employment should not cause the child to reside away from parents without approval, that permission for work in a bar, hotel, restaurant, etc., needs the consent of the Labour Commissioner, and that such permits should be annually renewed. The Committee again points out that this section of the Rules is not in conformity with the Convention in several aspects: firstly, whilst the Convention allows, under *Article 7, paragraph 1*, the admission to light work of persons only from 13 years of age, the above Rules do not limit the age of the children that may be employed; secondly, *Article 7, paragraphs 1 and 3*, permits the employment of children under the general minimum age only in regard to light work (that is, work which is not likely to be harmful to their health or development and not such as to jeopardize their school attendance or their capacity to benefit from the instruction received), which should be determined by the competent authority. The above Rules do not even limit such employment of under-age children to light work, but only provide for the abovementioned conditions; and thirdly, also under *Article 7, paragraph 3*, of the

Convention, the competent authority should prescribe the number of hours and the conditions of such employment or work. The Committee hopes that the Government will take the necessary measures, during the national social legislation review, in order to bring the legislation into conformity with the Convention.

The Committee hopes that the amendment to the Employment Act and the Employment (Children) Rules of 1977 will bring national legislation into conformity with the Convention on the aforementioned points.

Article 1 of the Convention in conjunction with Part V of the report form. With reference to its previous comments, the Committee notes the information provided by the Government according to which it obtained funding from an International Programme on the Elimination of Child Labour (IPEC) in June 2000 which will make it possible to finalize the Government's draft child labour policy. In this respect, the Government indicated that the final version of this draft child labour policy will be transmitted to the Office as soon as it is adopted. The Committee also notes that a national study on child labour is presently at its final preparatory stage and that it will be provided to the Office as soon as possible. The Committee, therefore, hopes to receive in the near future a copy of the final version of the draft child labour policy as well as a copy of the above national study.

The Committee also notes the documents attached to the Government's report and, in particular, the draft child labour policy and the report on the implementation of the national action plan envisaged in the context of the IPEC programme.

With regard to the national action plan under the IPEC programme, the Committee notes that the Minister of Education has created, in cooperation with UNICEF, several programmes intended to improve the education system. The objectives of these programmes were to make primary education compulsory and free of charge to everyone and to allow the reintegration into the education system of the children already working. The Committee notes with interest that in total 1,376 children received a professional training and that 3,475 children have been reintegrated in the education system. Noting the efforts accomplished by the Government, the Committee is bound to express its concern at the statistics contained in the draft child labour policy. Indeed, according to the Government's estimates, about 3.5 million children between 6 and 14 years of age do not attend school and work in different sectors of the economy. In addition, according to the UNICEF estimates, 850,000 children are working in the streets. The Committee hopes that the Government will take the necessary measures as soon as possible to resolve this grave problem and will provide information concerning the measures taken.

According to the information contained in the national action plan, the Committee notes that a child labour unit has been established in the Ministry of Employment, Development and Manpower in order to take child labour issues into account in Government policies and programmes. The Committee asks the Government to provide information concerning the functioning of the above unit.

The Committee notes that in the framework of IPEC, the national action plan reforms of the inspection system have taken place to improve controls over child labour. Thus, 8,074 children have been found working in commercial services, the agricultural sector, domestic works, construction and building, and forestry. A reduction in the number of children working in coffee plantations has been noted. The Committee notes that, by virtue of the above plan, studies have been made by the Health Director and by

the security services of 605 enterprises in order to identify the children working in dangerous occupations; out of the 4,294 children identified, 2,013 children have been removed from such activities. The Committee requests the Government to continue to provide information on this subject.

The Committee further notes the efforts made by the Government for the collection of data on child labour. It also notes that an inquiry is currently being carried out on child labour in the whole country by the Central office of Statistics. The Committee requests the Government to transmit to the Office the results of the inquiry carried out by the Central Office of Statistics.

Romania (ratification: 1975)

The Committee notes the information supplied by the Government in its report and requests it to provide further information on the following matters.

Article 2 of the Convention. In its previous comments, the Committee noted the discrepancy between article 45(4) of the 1991 Constitution on the one hand, under which minors under the age of 15 years may not be employed as wage earners and, on the other hand, section 7 of the 1972 Labour Code which sets the minimum age for admission to wage-earning employment at 16 years. The Committee notes the information supplied by the Government to the effect that the law recognizes that persons aged between 15 and 16 years have partial capacity to work, subject to approval by their parents or legal representative and only in activities appropriate to their physical development, aptitudes and skills. By virtue of paragraph 1(3) of the standards approved by Order No. 185/1990, the approval of the parents or the legal representative must be included in the employment contract. The Committee notes that section 7 of the Family Code stipulates that approval must be given by both parents. The Committee also notes that the Labour Code is currently undergoing revision and that the draft new Code provides that a person may undertake employment from the age of 16 years and may conclude an employment contract as a wage earner from the age of 15 years, with prior agreement of the parents or legal representative, if this does not prejudice their health, development and vocational training.

The Committee recalls again that in compliance with *Article 2, paragraph 1*, of the Convention, at the time of ratification of the Convention a minimum age for admission to employment or work of 16 years was specified and the Government is, therefore, bound to take the necessary measures so that legislation and practice respect this minimum age for admission.

Furthermore, and bearing in mind the information indicated above, the Committee recalls that under *Article 7, paragraphs 1 and 2* of the Convention, national laws may permit the employment or work of persons at least 15 years of age who have not yet completed their compulsory schooling provided that the work performed by the young persons is not such as to prejudice their health or development and attendance at school, and of young persons between 13 to 15 years of age on light work, in compliance with the abovementioned conditions. Under *paragraph 3* of the same Article, the competent authority shall determine the activities in which employment or work may be permitted and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

Consequently, the Committee would be grateful if the Government would indicate the measures taken or envisaged to ensure that young persons 13 to 15 years of age may be employed only exceptionally on work complying with the conditions set down in *Article 7*. It requests the Government, moreover, to supply a copy to the Office of the national legislation setting out the conditions of employment of young persons 15 to 16 years of age to which it refers in its report and in Order No. 185/1990.

With regard to unpaid employment or work by children, the Committee noted in its previous comments that no legislative measures are envisaged at the moment to fix the minimum age for admission to unpaid employment or work. It also noted that unpaid child labour occurs in rural areas, especially within the family. Recalling once again that the Convention covers all employment or work, irrespective of payment of wages or a formal employment contract, the Committee requests the Government once again to continue to supply information on any development in legislative measures, and also on measures taken or envisaged so that prohibition of child labour applies also to any type of work or employment, including work that is unpaid or performed without a formal contract.

Article 9. The Committee notes the adoption of Act No. 130/1999 and Emergency Order No. 136/1999 which supplements and amends the law. The Committee notes the information supplied by the Government to the effect that by virtue of section 1(1) and (2) of Act No. 130/1999, employers have an obligation to conclude a written contract and that by virtue of paragraph 4 of the Act, civil agreements for supply of services are also in written form and must, like individual employment contracts, be registered with the general directorates of labour and social protection.

The Committee also notes the Government's indications relating to supervision by the Ministry of Labour and Social Protection of the application of the provisions of the Act as well as those relating to fines when an employer infringes the Act. It requests the Government to supply a copy of Act No. 130/1999 and Emergency Order No. 136/1999.

Article 1 read in conjunction with Part V of the report form. The Committee notes with interest Emergency Order No. 192/199 which establishes the National Agency for the Protection of the Rights of the Child which, as a specialized body of the public administration subject to the Government, replaces the Special Department for Child Protection. The Committee notes that the Agency has the following functions, *inter alia*: the preparation and application of various programmes and strategies in relation to the protection of the rights of the child and of adoption, the establishment of the standards necessary for carrying out these various programmes and the supervision of application of legislation relating to the rights of the child. The Committee requests the Government to provide further information concerning the measures taken and action carried out by the National Agency with a view to the progressive elimination of child labour, and particularly on the practical application of the provisions of the Convention.

The Committee also notes with interest the information supplied by the Government to the effect that a national plan of action for the prevention and progressive elimination of child labour in Romania has been set up in the context of the International Programme for the Elimination of Child Labour (IPEC). According to the information in the Government's report, the general purpose of the action plan is to contribute to the prevention and progressive elimination of child labour and to solve the problem of street children. The Committee notes that the activities undertaken relate to various spheres

such as the prevention of the extension of child labour in both rural and urban areas and the increase of structural capacities of governmental bodies and non-governmental organizations (NGOs) in order to ensure the implementation and follow-up of campaigns against child labour. The Committee also notes that a National Steering Committee whose role is to supervise the implementation of activity programmes within the abovementioned national action plan, and of a specialized unit on child labour have been established. The Committee requests the Government to supply information on the national action plan and particularly on the functioning of the National Steering Committee and the specialized unit on child labour.

The Committee notes the various legislation adopted by the Government with a view to increasing the social protection of the most vulnerable families with the objective of reducing poverty levels and, implicitly, eliminating child labour. It requests the Government to supply information on the impact of these measures on the abolition of child labour.

The Committee also requests the Government to supply information regarding the practical application of the Convention by supplying, for instance, extracts from inspection service reports and statistics on youth employment.

Russian Federation (ratification: 1979)

The Committee noted in its previous comments that the minimum age for employment was lowered to 15 years of age from the previous 16, by virtue of federal Act No. 182-FZ of 24 November 1995. It pointed out that the minimum age for admission to employment or work of 16 years had been specified at the time of ratification in accordance with *Article 2(1) of the Convention*, and that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise progressively the minimum age as provided in *Articles 1 and 2(2)*.

The Committee notes the indication in the Government's report that in a draft of a new Labour Code which at present is under consideration at the State Duma, it is envisaged to restore the minimum age for admission to employment at the level of 16 years of age. It requests the Government to indicate any progress made in this regard, and also measures taken, pending the amendment of law, to ensure that the engagement in employment or work of children under 16 years of age is limited to the exceptions provided for in the Convention.

The Committee notes the indication in the Government's report that in violation of section 175 of the Labour Code which prescribes work for which use of labour of persons younger than 18 years of age is prohibited, persons under age were often engaged in work under harmful and hazardous working conditions, and that state inspectors carried out in 1999 more than 2,300 targeted inspections to ensure the observance of the labour rights of persons under age, which identified and eliminated 8,000 cases of violations. It further notes that the Government states in its second periodic report submitted to the United Nations Committee on the Rights of the Child in 1998, that the number of juveniles in unregulated employment, in which their working rights and guarantees for the protection of health and morality are not always observed, is on the increase in the towns, in connection with the development of the non-state sector of the economy, especially small private businesses (paragraph 451 of CRC/C/65/Add.5).

The Committee requests the Government to provide information on any measures taken or envisaged to prevent children from working under harmful and hazardous conditions, and to continue to supply information on the practical application of the national legislation giving effect to the Convention, in particular in the non-state sector, including, for example, extracts from official reports, statistical data and the number and nature of the contravention reported (*Part V of the report form*).

Rwanda (ratification: 1981)

The Committee notes the information contained in the Government's report. It also notes the observation transmitted by the Confederation of Trade Unions of Rwanda (CESTAR), which was forwarded to the Government but which did not make any comments. The Committee requests the Government to indicate the measures which have been adopted so that reports reach CESTAR in time, accompanied by copies of report forms, so that CESTAR can play its full role in the application of Conventions and Recommendations.

Article 2, paragraph 1, of the Convention. The Committee repeats its previous comments. It requests the Government to indicate the measures which have been taken or are envisaged to ensure that no person under the minimum age laid down (14 years) is admitted to employment or work in any occupation, including self-employment.

Article 2, paragraph 3. According to the information provided by the Government in its report, by virtue of Act No. 14/1985 (organizing integrated primary, rural and craft education and secondary education), as amended by Act No. 48/91 of 25 October 1991, school is compulsory from seven years of age (or when children have reached their sixth birthday) for six years; compulsory schooling would therefore end at the age of 13. However, section 124 of the Labour Code provides that children cannot be employed in any enterprise, even as apprentices, before the age of 14 years, unless an exemption is issued by the Minister taking into account the specific circumstances of the occupation or situation of such persons. The Committee requests the Government to:

- (a) provide a copy of Act No. 14/1985;
- (b) indicate whether the Minister has issued exemptions to the prohibition from employing children under the age of 14 years; and
- (c) provide information on the measures which have been taken or are envisaged to resolve these differences between the age of completing compulsory school and the minimum age for work, which is set at 15 years by the Convention.

Article 3. While awaiting the adoption of the new Labour Code, the Committee has been noting for many years that the ministerial order envisaged under section 124 of the Labour Code has not yet been adopted. It recalls that it is essential to clearly define, by means of the envisaged order, the type of work and the categories of enterprises which are prohibited for young persons so that legislative provisions prohibiting hazardous work are applied in practice. It, therefore, requests the Government to continue its endeavours in this respect and to indicate any progress achieved.

Article 7, paragraphs 1 and 3. The Committee requests the Government to provide information concerning the application of sections 125 and 24 of the Labour Code and on the measures which have been taken or are envisaged to define the scope of the exemptions envisaged by these two sections. Furthermore, the Committee requests

the Government to provide information on the application in practice of section 126 of the Labour Code, which provides that young persons may not be maintained in jobs which are recognized as being beyond their strength or prejudicial to their health and that they must be assigned to suitable employment.

Article 8. The Committee notes that, contrary to the view expressed by the Government, sections 24 and 125 of the Labour Code do not give effect to this Article of the Convention. The Committee, therefore, requests the Government to indicate the measures which have been taken or are envisaged to determine the conditions of employment or work authorized in the event of the participation of children in artistic performances, as required by the Convention.

Article 9, paragraphs 1 and 3, and Part V of the report form. The Committee notes that the 1998 survey is being continued in four prefectures and requests the Government to provide information on the application of the Convention in practice as soon as it is available. Furthermore, it requests the Government to provide a copy of the employer's register envisaged in section 168 of the Labour Code.

Tajikistan (ratification: 1993)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

The Committee recalls that the minimum age of 16 years for admission to employment or work was specified under *Article 2, paragraph 1, of the Convention* as regards Tajikistan. It notes, however, that section 174 of the new Labour Code (Act of 15 May 1997) only prohibits the employment of persons under the age of 15 in contrast to the previous Code which fixed the minimum age of 16 years. The Committee recalls that the lowering of the existing minimum age is contrary to the principle of the Convention, which is to raise the minimum age as provided by *Articles 1 and 2(2)*. It also recalls that *Article 7* of the Convention allows, as an exception, the employment or work of persons 13 to 15 years of age on only light work which is not likely to be harmful to their health or development and not such as to prejudice their attendance at school. Other than such light work, work done by children under 16 years of age, must be prohibited. Therefore, the Committee asks the Government to indicate the measures taken or envisaged, pursuant to its declaration under *Article 2*, to ensure that access to employment of children of 15 years of age may be allowed, exceptionally, only for work meeting the criteria set out in *Article 7*.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

United Arab Emirates (ratification: 1998)

The Committee notes the communication from the International Confederation of Free Trade Unions (ICFTU) concerning work by children as camel jockeys. These comments were forwarded to the Government on 18 September 2000. However, the Office has still not received the Government's comments. While awaiting the Government's reply, the Committee refers in this observation to the communication from the ICFTU.

In these comments, reference is made to children of five or six years of age who are taken to the United Arab Emirates to be used as jockeys in camel races. These children are often kidnapped, sold by their parents or taken under false pretences. They

are thereby separated from their families and taken to a country where the people, culture and language are completely unknown to them. The boys are underfed and subjected to severe diets before races so they are as light as possible.

Article 2 of the Convention. The comments emphasize that the use of young children as camel jockeys is not in conformity with section 20 of the labour legislation of the United Arab Emirates, which forbids work by children under the age of 15 years. The Committee recalls that, when ratifying Convention No. 138, the Government specified the minimum age of 15 years for admission to employment or work.

The Committee emphasizes that, in the report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN. 4/1999/71), it is indicated that "in 1993, the Camel Jockey Association of the United Arab Emirates finally prohibited the use of children as jockeys. New evidence, however, clearly indicates that the rules are being blatantly ignored. In February 1998, ten Bangladeshi boys, aged between five and eight, were rescued in India while being smuggled to become camel jockeys".

The Committee hopes that the Government will furnish its comments concerning the observations transmitted by the ICFTU. It urges the Government to take all the necessary measures to prohibit work by children as camel jockeys and hopes that the Government will provide information on this matter in its first report.

Article 3. The Committee recalls that, by virtue of *Article 3, paragraph 1*, of the Convention, the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years. The Committee considers that the employment of children as camel jockeys constitutes dangerous work within the meaning of this Article. The Committee therefore requests the Government to take all the necessary measures to ensure that no child under 18 years of age is employed as a camel jockey.

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Antigua and Barbuda, Argentina, Bulgaria, Costa Rica, Cuba, Denmark, Dominica, El Salvador, Equatorial Guinea, Guatemala, Iraq, Ireland, Italy, Libyan Arab Jamahiriya, Malta, Mauritius, Netherlands, Niger, Norway, Poland, Slovakia, Spain, Sweden, Tajikistan, Togo, Tunisia, Turkey, Ukraine, Zambia.*

Convention No. 139: Occupational Cancer, 1974

Egypt (ratification: 1982)

1. Article 1, paragraphs 1 and 3, of the Convention. For many years the Committee noted the Government's indication that it intended to take into consideration the Committee's comments in the revision of the Labour Code (Act No. 137 of 1981) and of Orders No. 55 of 1983, and No. 28 of 1982, and that a review of carcinogenic substances and of asbestos was under way. The Committee notes the Government's indication in its report that the new Labour Code has not yet been published, but that Order No. 55 of 1983, on the protective measures to ensure safety and health in the workplace and the level of exposure to pollutants is currently being prepared and is

undergoing final revision before being submitted to the competent state body. Moreover, new chemical substances have been added to the schedule annexed to Order No. 55 of 1983, including a number of carcinogenic substances. The Committee reiterates its hope that the Government will soon be able to report the adoption of the new Labour Code, as well as the revision of Order No. 55 of 1983, with a view to ensuring the application of *Article 1, paragraphs 1 and 3, of the Convention*.

2. *Article 2, paragraph 2.* The Committee notes the Government's indication to the effect that the draft amendment to Order No. 55 of 1983, will incorporate measures which aim to reduce the number of workers exposed to chemical hazards, as well as the duration and degree of exposure. The Committee hopes that the draft amendment to Order No. 55 of 1983, will be adopted in the near future and will contain provisions requiring specific measures to be taken with a view to reducing the number of workers exposed, in conformity with *Article 2, paragraph 2, of the Convention*. With regard to the duration of exposure to carcinogenic substances or agents, the Government has indicated in its reports since 1986, that Order No. 28 of 1982, promulgated pursuant to section 134 of the Labour Code, which provides for the adoption of ministerial orders to reduce the hours of work of certain classes of workers and in arduous work, is being amended with a view to the inclusion of certain activities, involving exposure to carcinogenic substances, in the schedule of dangerous and hazardous activities. The Committee accordingly hopes that the Government will amend the existing Order in the near future in order to bring it into conformity with this Article of the Convention. It requests the Government to supply copies of the revised Orders once they have been adopted.

3. *Article 3.* In its previous comment, the Committee noted the Government's indication that Order No. 36 of 1986, establishes the reporting procedure for the data on occupational diseases, accidents, injuries, ordinary and chronic diseases and cases of exposure to carcinogenic substances which occur at the workplace, in establishments with at least 15 workers, which is to be reported on forms to be filled in under the supervision of the establishment's physician. The Committee had recalled that this Article of the Convention provides for measures to protect workers against the risk of exposure and for an appropriate system of records; such a system is not limited to workers already suffering from an occupational disease, nor is it limited to establishments employing a certain number of workers, since the Convention applies to *all* workers who might be exposed in the course of their work. The Committee notes that the Government's report does not contain a reply in this regard. The Committee therefore reiterates its request and asks the Government to indicate the measures taken for the establishment of an appropriate system of records for the workers concerned.

It also asks the Government to supply a copy of the abovementioned Order No. 36 of 1986.

4. *Article 4.* The Committee notes that section 117 of the Labour Code, Act No. 137 of 1981, provides that the employer shall inform a worker, before his appointment, of dangers related to the non-observance of the protection measures prescribed for his job and shall provide all personal protection measures, including training on their correct use. The Government further indicates that the General Health Insurance Agency notifies the results of the periodic medical examinations, like they are also notified by the Occupational Safety and Health Office, responsible for inspections of enterprises, which

are carried out through workers' representatives who are members of the Occupational Safety and Health Committee at undertakings during the review of the results at their monthly meetings. The Committee wishes to point out that the information of general character that must be supplied to the workers in application of section 117 of the Labour Code, although important, does not meet the requirements of *Article 4* of the Convention. It recalls that *Article 4* of the Convention calls for information to be provided to the workers on the dangers involved and on the measures to be taken in relation to the exposure to carcinogenic substances or agents. The Committee therefore asks the Government to indicate the steps taken to provide information to the workers on the dangers involved in the exposure to carcinogenic substances and on the measures to be taken in this respect.

5. *Article 5*. The Committee notes that section 122, subsection 1, of the Labour Code of 1981, establishes the employer's obligation to carry out periodical medical inspections on workers affected by any of the occupational diseases with a view to keeping them permanently fit and to identifying any diseases at their preliminary stages. According to subsection 2, "such an inspection shall be carried out by the General Health Insurance Agency in return for the fees stipulated in the Social Insurance Law and which shall be at the expense of the firm". The Committee further notes the Government's indication that Order No. 218 of 1977, issued by the Minister of Social Security, specifies that the periodicity of medical examinations for workers exposed to this kind of hazard is either every six months or every one or two years. The Government also explains that the departments responsible for these periodic medical examinations within the units of the General Health Insurance Agency formulate the rules and plans for carrying out such medical examinations, in accordance with international standards and the level of professional exposure. The Committee notes that the Government again refers to section 67 of the Social Security Law No. 79 of 1975, concerning insurance against employment injuries, which provides for continued medical treatment for one year after the employment of a worker who has contracted an occupational disease. In this regard, the Government explains that in the case of insured persons who are exposed to any occupational hazard, such as carcinogenic substances, and who show symptoms of diseases related to such substances, it is essential to take all the necessary measures of investigation to identify the disease. The Committee, taking due note of this information, recalls once again that *Article 5* of the Convention provides for medical examinations or biological tests or investigations after employment as necessary for *all* workers who have been exposed to carcinogenic substances, and not only for those who have contracted an occupational disease or where there is a firm suspicion that they might have contracted an occupational disease. It points out that the inclusion of post-employment medical examinations, as necessary, to evaluate the exposure to carcinogenic substances or agents and to supervise the state of health of the worker in relation to the occupational hazards is intended to respond to the not uncommon situation in which a cancer is not detected until after the worker has terminated the employment involving exposure. The Committee therefore once again hopes that the Government will take the necessary measures to ensure that all workers exposed to carcinogenic substances or agents are provided with medical examinations or biological tests or investigations after their employment as necessary to evaluate their exposure and supervise their state of health in relation to the occupational hazards. The

Committee hopes that the Government will supply information in its next report on the progress made in this respect.

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In addition, requests regarding certain points are being addressed directly to the following States: *Belgium, Ireland.*

Convention No. 140: Paid Educational Leave, 1974

Requests regarding certain points are being addressed directly to the following States: *Afghanistan, Finland, Guinea, Guyana, Hungary, Iraq, Kenya, Nicaragua, Poland, San Marino, Sweden, United Republic of Tanzania.*

Information supplied by *Belgium* and *Mexico* in answer to a direct request has been noted by the Committee.

Convention No. 141: Rural Workers' Organisations, 1975

Afghanistan (ratification: 1979)

The Committee notes with regret that for the fourth year in succession the Government's report has not been received.

In its previous comments the Committee recalled that, under *Article 3, paragraph 2, of the Convention*, rural workers' organizations are to be independent and voluntary in character and to remain free from all interference, coercion or repression. In this regard, the Committee noted with concern that several provisions of the Labour Code conferred prerogatives on the single trade union designated by name as "the Central Council of the DRA's Trade Unions", particularly in respect of the preparation of legislation and appointments to certain jobs (section 148(2) and section 3(4) of the Code). Furthermore, it noted that the objects of the Code included the consolidation of labour discipline and the implementation of production plans (section 1(4) of the Code).

The Committee had noted the information provided by the Government concerning the role of cooperatives generally under the Cooperative Law of 1981 and the voluntary nature of their membership, free from any form of coercion or pressure. It also duly notes that, due to the special conditions prevailing in the country, the Government has had difficulty collecting information from the concerned organizations. The Government is nevertheless requested to provide, in its next report, a copy of the recent statutes of the Peasants' Cooperative Union of Afghanistan and to provide statistical information concerning the number of its members as soon as this is available.

The Government is requested to indicate, in its next report, any measures taken to encourage rural workers' organizations to play their role in economic and social development free from all interference of any sort as a result of this cooperation.

Costa Rica (ratification: 1991)

The Committee notes the Government's report and recalls that its earlier comments referred to:

- (1) the exclusion of agricultural and stock-raising enterprises permanently employing no more than five workers from the scope of the Labour Code of 1943 (section 14(c)); and
- (2) the prohibition of the right to strike in the agricultural, stock-raising and forestry sectors (section 369(b), now section 376(b) of the Labour Code).

Right to organize of rural workers

1. With regard to the first issue, the Committee notes that, according to the information provided by the Government, section 14(c) of the Labour Code was repealed by the Supreme Court of Justice on 22 July 1954.

The Committee requests the Government to take measures to ensure that the repeal of this provision is reflected in the legislation which is in force, since the texts of the Labour Code published in recent years continue to include subsection (c) of section 14 of the above Code.

2. With regard to the prohibition of the right to strike in the agricultural, stock-raising and forestry sectors, the Committee noted that in February 1998 the Constitutional Chamber of Supreme Court of Justice declared unconstitutional the prohibition of the right to strike in the public sector and in the agricultural, stock-raising and forestry sectors. The Committee had requested the Government, with a view to removing all ambiguity with regard to this matter, to repeal section 369(b), now section 376(b) of the Labour Code, possibly by means of the Bill which it had reported submitting to the Legislative Assembly.

In this regard, the Committee notes the Government's expression of interest and the hope that it will provide information in its next report on any measure taken in this respect. The Committee therefore expresses the firm hope that the Government will provide information in its next report on the measures adopted to give effect to the free exercise of the right to strike in the public sector and in the agricultural, stock-raising and forestry sectors.

Free access of trade union leaders to plantations

The Committee also recalls the information provided by the Government in its report in 1999 concerning the number of trade union organizations in plantations, and the approximate number of their members. It also recalls with interest the administrative directive issued by the Ministry of Labour on 18 January 1999 ordering the competent authorities "... to remain constantly vigilant in the protection of the collective rights of workers, to ensure that there is no hindrance to workers and their trade union representatives' constitutional right to assembly and to hold meetings and peaceful demonstrations with the workers ...".

The Committee moreover once again wishes to emphasize the importance for the Government to take measures by legislative means to safeguard the freedom of access of trade union officers to plantations, which is explicitly recognized in the conclusions adopted by the ILO committees on work in plantations. The Committee once again requests the Government to provide information on any development on this matter in its next report.

* * *

In addition, a request regarding certain points is being addressed directly to *Mali*.

Convention No. 142: Human Resources Development, 1975

Afghanistan (ratification: 1979)

The Committee again notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee refers to its observation on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which it notes the allegations that access to all levels of general, technical and vocational education is prohibited for women. The Committee recalls the Government's obligation under the Convention to develop policies and programmes to encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work. It hopes to find in the Government's next report full information on women's access to education and training and measures taken in this respect.

The Committee again expresses the hope that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Finland, Guinea, Italy, Lithuania, Niger, United Republic of Tanzania*.

Convention No. 143: Migrant Workers (Supplementary Provisions), 1975

Kenya (ratification: 1979)

Article 10 of the Convention. The Committee notes the Government's statement that there are no laws, regulations or administrative instructions that provide for discrimination in employment between lawfully resident migrant workers and Kenyan nationals. It nonetheless recalls that in its previous report, the Government referred to a policy of "Kenyanization" of employment, which is contrary to the principle established by the Convention of equal opportunity and treatment between national and foreign workers provided that the latter are residing lawfully in the country of employment. It asks the Government to indicate whether this policy is still applied and would again draw its attention to *Article 14(a)* of the Convention under which ratifying States may make the free choice of employment of migrant workers subject to the condition that they have resided lawfully in the country for the purpose of employment for a prescribed period not exceeding two years.

Norway (ratification: 1979)

1. The Committee welcomes official recognition by the authorities that Norway is in the process of becoming a multicultural society and that it should make the most of this diversity. It notes in particular the statement made on 28 February 1997 by the

Minister of Local Government and Labour in presenting to the Parliament his report entitled "Immigration and a Multi-Cultural Norway" (St. meld No. 17, 1996-97) that "if our society is to benefit from the resources and experience immigrants have, it is important that they are allowed to participate in Norwegian society under the same terms and with the same obligations as the rest of the population".

2. The Committee notes with interest the numerous initiatives taken by the Government to combat racism and discrimination in general and in the field of employment and occupation in particular. First, on the legislative side, it notes that section 55A of the Act of 4 February 1977 on the protection of workers and conditions of employment was amended in 1998 to formally prohibit any discrimination based on race, colour, ethnic or national origin or sexual orientation in recruitment procedures. At a more practical level, it notes the adoption of a Plan of Action to Combat Racism and Discrimination for the period 1998-2001 which sets out the measures that should be adopted in the following fields: (a) legal assistance to persons who are victims of discrimination and measures to improve monitoring of the type and extent of racial discrimination; (b) measures taken by the police to deal with discrimination, especially in access to public places; (c) measures to prevent discrimination in the labour markets and to promote equal opportunities; (d) measures in the housing market to ensure equal opportunities for all; (e) measures in primary and secondary schools to prevent racism and discrimination; (f) measures to increase multicultural understanding in key service sectors by improving the education of personnel; and (g) measures in local arenas to support activities against racism.

3. The Committee notes that the Government has also presented a Plan of Action (1998-2001) for recruiting persons with an immigrant background to the state sector which contains measures to reduce structural obstacles to the employment of these persons and other measures focused on the attitude of the employment authorities.

4. In parallel with these activities, the Government has established new bodies such as: (a) the Centre for Combating Ethnic Discrimination (1998), an independent governmental body that will provide professional legal assistance to individuals who are victims of discrimination on grounds of religion or belief, race, colour, or national or ethnic origin, which is also responsible for monitoring the nature and extent of racial discrimination in Norway; (b) a new Department of Indigenous, Minority and Immigrant Affairs, set up in 1999 in the Ministry of Local Government and Regional Development, by which efforts to combat racism and discrimination will be better coordinated and given a wider perspective; and (c) a committee, in 1999, to draft a new act on combating ethnic discrimination.

5. The Committee notes, however, that although the labour market in Norway has generally been favourable for jobseekers in the past few years, immigrants still experience problems: in May 1999 the unemployment rate was 6.3 per cent for immigrants compared with 2.2 per cent for the population as a whole and stood at 12.6 per cent for immigrants from Africa. The Government considers that the main obstacles for immigrants in the labour market seem to be lack of proficiency in the Norwegian language, insufficient or unrecognized qualifications, discrimination and lack of work experience in Norway. The Committee notes the information supplied by the Government on the measures taken, particularly in the Norwegian Labour Market Service (Aetat), to assist migrant workers to overcome these obstacles and would be

grateful if the Government would supply further information on results obtained in this respect.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Cameroon, Guinea, Kenya, Norway, San Marino, Slovenia, Togo, Uganda.*

**Convention No. 144: Tripartite Consultation
(International Labour Standards), 1976**

Bahamas (ratification: 1979)

The Committee notes the Government's report which supplies elements of information in reply to its observation of 1998. It particularly notes the information on the submission to the Cabinet of a proposal to ratify several international labour Conventions including some core Conventions which have not yet been ratified. According to the information supplied in the report, this submission was carried out subsequent to consultation with the employers' and workers' representative organizations within the Joint Tripartite Advisory Committee. The Committee welcomes this information, but considers it insufficient to provide a full picture of the effect given to certain provisions of the Convention. It therefore once again requests the Government to supply further information on the following Articles.

Article 2 of the Convention. The Committee recalls that it has been asking the Government since 1990 to describe the nature and form of procedures within the Joint Tripartite Advisory Committee to ensure that effective consultations are held on each of the questions set forth in *Article 5(1)*.

Article 5. The Committee requests the Government to supply full and detailed information on the consultations held during the period covered by the next report on each of the questions set forth in *paragraph 1*. It wishes to recall in this connection that some of the subjects listed (replies to questionnaires (a), submissions to the competent authorities (b), reports to be made to the International Labour Office (d)) involved annual consultation, while others (re-examination of unratified Conventions and Recommendations (c), proposals for the denunciation of ratified Conventions (e)) require less frequent examination. The Government is also requested to indicate the frequency of consultations and to provide details on the nature of all reports and recommendations which arise therefrom.

Article 6. In its previous report, in conformity with the present Article, the Government expressed its wish to consult the representative organizations on the need to produce an annual report on the working of the consultation procedures it described. The Government has the Committee's encouragement in this connection and is requested to communicate, where appropriate, all information on the results of such consultation.

Côte d'Ivoire (ratification: 1987)

The Committee notes the Government's report covering the period ending September 1999. In its previous comments, the Committee had noted the Government's

intention to make the Tripartite Committee on ILO Matters fully operational. However, it notes that the Tripartite Committee did not meet during the period covered by the report and that consultations on matters relating to the ILO were held in the Advisory Labour Commission. It trusts that the Government will take all the necessary measures as soon as possible to give effect to the provisions of the Convention, as it has expressed the intention of doing, and that in its next report it will be in a position to provide more complete and detailed information on the consultations held on the matters covered by *Article 5, paragraph 1, of the Convention*.

Gabon (ratification: 1988)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes the Government's report and the information that it contains in reply to its previous direct request. It also notes the comments made by the Free Federation of Energy, Mining and Allied Enterprises (FLEEMA) and the Gabonese Confederation of Free Trade Unions (CGSL).

The Committee notes the information provided in the Government's report on the consultations held on each of the points set out in *Article 5, paragraph 1, of the Convention*. It notes in particular that, in accordance with *point (b)* of the above paragraph, the Home Work Convention, 1996 (No. 177), as well as various instruments adopted at the last Maritime Session of the International Labour Conference, have been submitted to the competent authority or authorities. Noting that the FLEEMA, in its comments, alleges that the Safety and Health in Mines Convention, 1995 (No. 176), and Recommendation No. 183 have not been submitted to the competent authority, the Committee wishes to recall on this point that it stated in its 1982 General Survey (paragraph 109) that the Convention goes beyond the obligation to submit stipulated in article 19 of the ILO Constitution and requests the Government to consult the representative organizations before finalizing the proposals to be submitted to the competent authority or authorities in relation to the Conventions and Recommendations which have to be submitted to them. In the light of these explanations, the Government is requested to make the comments that it considers appropriate on the observations of the FLEEMA.

Finally, with regard to the application of *Article 6*, the Committee notes the Government's reply to the observation made by the Gabonese Confederation of Free Trade Unions alleging the absence of consultations on the appropriateness of issuing an annual report on the working of the procedures provided for in the Convention. The Government states that budgetary restrictions have prevented the establishment of a tripartite consultation body for the purposes set out in the Convention, which has been the major contributing factor to this situation. The Committee requests it to provide information in future reports on any development relating to this subject and hopes that such consultations will be held in the near future.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sierra Leone (ratification: 1985)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee notes that the Joint Consultative Committee has met several times to debate the new labour legislation. It wishes to recall that the tripartite consultations referred

to in the Convention are essentially designed to promote the implementation of international labour standards and concern, in particular, the matters defined and set out in *Article 5, paragraph 1, of the Convention*. The Committee therefore requests the Government to supply full and detailed information on any tripartite consultations held, including their frequency, on the subject of:

- (a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
- (b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organization;
- (c) the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
- (d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organization;
- (e) proposals for the denunciation of ratified Conventions.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Spain (ratification: 1984)

The Committee notes the observations made by the General Union of Workers (UGT), in a communication addressed to the ILO in January 2000 and transmitted to the Government, on the failure of the latter to organize the meeting with the social partners, that it had requested, to study the establishment of more appropriate consultation procedures to give effect to the Convention. The UGT indicates that the comments it has been making for many years on application of the Convention remain unchanged. The Committee requests the Government to make any comment it deems appropriate in reply to these observations.

The Committee recalls that in its previous observation it noted that the Government undertook to consult the social partners in order to find an appropriate solution to the practical problems of application raised by the UGT and the Trade Union Federation of Workers' Commissions (CC.OO.). The Committee expresses the hope that the Government's next report would supply information on real progress achieved in establishing an effective consultation procedure, as required by *Article 2 of the Convention*, to the satisfaction of all parties concerned.

Suriname (ratification: 1979)

The Committee notes the Government's report for the period ending October 2000. It notes that the Government confines itself to referring to its previous report as regards the application of *Article 5 of the Convention*. However, the last report only provides information of a general nature on the activities of the Labour Advisory Board, but does not contain the detailed information required by the report form on the consultations held on each of the matters set out in *Article 5, paragraph 1*, on the frequency of such consultations and, where appropriate, on the nature of any reports or recommendations made as a result of the consultations.

The Committee notes that the Labour Advisory Board meets once a month and that it will prepare an activity report for the period 2000-02. The Committee once again hopes that the Government will make every effort to provide in its next report the detailed information which has been requested since 1993 and that it will not fail to provide, as soon as possible, a copy of the above activity report if it contains information on the effect given to the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Algeria, Burundi, Chad, Denmark, Greece, Grenada, Guyana, India, Iraq, Kenya, Malawi, Mozambique, New Zealand, Nigeria, Portugal, Sao Tome and Principe, Slovakia, United Republic of Tanzania, Trinidad and Tobago, United Kingdom*

Information supplied by *Egypt, Ireland and Philippines* in answer to a direct request has been noted by the Committee.

Convention No. 147: Merchant Shipping (Minimum Standards), 1976

Requests regarding certain points are being addressed directly to the following States: *Azerbaijan, Barbados, China (Hong Kong Special Administrative Region), Costa Rica, Croatia, Cyprus, India, Iraq, Israel, Kyrgyzstan, Lebanon, Liberia, Russian Federation, Sweden, Ukraine.*

Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977

Brazil (ratification: 1981)

The Committee notes the observations made by the Trade Union of Workers in enterprises of Telecommunication, Postal, Telegraphic and other similar Telephonic Operators in the State of Rio de Janeiro (SINTTEL-RJ) as well as the reply given by the Government to these observations.

The trade union refers to many occupational accidents in the enterprise TELEMAR due to the very high levels of noise or sound pressure. Moreover the said enterprise has had great difficulty in negotiating collective agreements with the union as can be seen from the two unfinished collective agreements. It requests that the risks to which the workers are exposed be investigated and that in the event that, after inspection of the workplace, it is found that any environmental factor, be it physical, chemical or biological, exceeds the limits fixed in the NR-15, it requests that measures be taken in accordance with sections 189 and 190 of the Consolidation of the Labour Laws (CLT).

The Committee notes from the annexes the information sent by the union regarding the types of occupational accidents and diseases and the functions of those who sustained them. It appears that most of the posts involved technical or operational functions (telephone operators, commercial and service staff, staff dealing with installation and repair work) and their accidents and diseases resulted in varying degrees of hearing problems and loss. Moreover, TELEMAR had suddenly eliminated the ten-

minute break and the result has been increasing auditory lesions and loss in working capacity. Prior to the privatization of the activity an ergonomic study had indicated that work breaks were a way of minimizing such risks. In their view TELEMAR is not respecting the standards of NR-17 on the occupational safety and health of workers nor has it taken part in the round-table discussion with the Regional Delegation of Labour (DRT).

The Committee notes from a medical report annexed to these observations of the union that medical condition of the upper part of the body involving tendonitis, back problems, and other physical pain resulting from repetitive tasks, the use of equipment not adapted to the work, and other ergonomic and working environmental causes were noted. These conditions were progressive and at times resulting in invalidity. The consequences are serious not only for the workers but also for the enterprises. Women workers were among the ones most affected. This report indicates that even though definitive cures were hard to come by treatment included physiotherapy, anti-inflammation treatment, immobilization, rest, and surgery. The application of NR-17 of the Order No. 3214 was being progressively introduced in enterprises with a view to preventing and controlling these effects.

The Committee notes the Government's reply, which conveys information relating to the results of inspection visits conducted at TELEMAR during the months of August, September and October of 1999. The same enterprise was also inspected last in the month of May (2000). These visits revealed that there were 9,690 workers employed of which 3,101 were women. The medical and safety and health staff of the enterprise were contacted during the visits and no violations of the principles of the Convention were uncovered. It notes that it was only one local of the enterprise and not the branches of the enterprise that was actually visited. The Committee notes from the actual reports of the visits that various irregularities such as failure to present documents (only ten out of the 22 medical certificates were produced) were noted and notification given to the enterprise including cases involving varying degrees of hearing problems and loss were noted. After examination of 22 workers and one ex-worker, nine workers were considered to have conditions suggestive of minor hearing loss due to high levels of noise in accordance with the provisions of Order 19/98 of MTE. Two workers of the enterprise were given certificates of disability due to loss of hearing due to high levels of noise. Another two or three workers of the enterprise continue to be followed up by a team of TELEMAR medical doctors. While the cases of two other workers have turned out not to be cases of hearing loss two other ones await conclusions.

The Committee would be grateful if the Government would continue to provide further information on the evolution of the situation of occupational safety and health of workers with respect to noise in the various branches of the enterprise TELEMAR, including reports on inspection visits conducted, statistics on occupational accidents and diseases, contraventions, and measures taken to correct them.

In addition, in its earlier observations, the Committee had noted the observations communicated by the Trade Union of Workers in the Civil Construction Industry, supported by the Trade Union of Mine and Metallurgy Workers (SINDIMINA), the Trade Union of Clothing and Textile Industry Workers (SINDITEXTIL), the Trade Union of Water Industry Workers, the Trade Union of Bakers and Pastry Cooks, the Trade Union of Port Workers (SINDIPESE), the Trade Union of Security Company

Workers and the Trade Union of Oil Workers (SINDIPETRO), all workers' organizations in the state of Sergipe, which alleged that the regional delegate of the Ministry of Labour prohibits inspectors from being accompanied by workers' representatives. These comments appear to highlight the seriousness of the situation denounced in 1993 by the representatives of the workers' organizations, in that they indicate the existence of a policy on the part of the employers to prevent labour inspections, and the more so when the inspectors are accompanied by workers' representatives. This question was the object of a 1995 observation by the Committee. The Committee had noted, in its observation of 1997, the Government's reference to a draft standard instruction submitted to the National Labour Council, with a view to solving this problem. In its 1998 report the Government indicated that the "draft standard instruction" sent to the National Labour Council had been shelved on the grounds that the field covered by this regulation should be subject to collective bargaining and that the pertinent legislative measures would be adopted subsequently. The Government therefore indicates the adoption of Order No. 03 of 7 February 1998, issued by the Secretariat of Occupational Safety and Health (SSMT), which, under section 1(1) of Regulation No. 1, 1.7(c), IV(d), allows workers' representatives to accompany inspectors on visits related to the enforcement of legal and regulatory texts on occupational safety and health. In its report, the Government adds that this Order is applied throughout the entire territory.

The Committee observes that the Order cited (No. 03 of 7 February) was adopted in 1988, and not in 1998, and was published in the *Official Journal* of 10 March 1988. The Committee thus understands that the problems highlighted by the workers' organizations did not arise from the absence of a regulation, but from the failure to apply and respect a regulation, both by the employers and, more seriously, by a representative of the Government. The Committee therefore urges the Government to supply information on the measures adopted or envisaged to guarantee, under the terms of Order No. 03 of 7 February 1988 of the Secretariat of Occupational Safety and Health, that workers' representatives may accompany inspectors on their inspection visits related to the enforcement of occupational safety and health legislation and regulations, in application of the provisions of *Article 5, paragraph 4, of the Convention*, as well as information on the measures adopted in respect of the representatives of the state (the regional delegate of the Ministry of Labour) to ensure respect both for national legislation and for the provisions of the Convention.

The Committee therefore hopes that the Government will provide all information relating to the measures adopted to resolve all the abovementioned problems raised by the workers' organization.

The Committee is also addressing a request on a number of other questions relating to the application of the Convention directly to the Government.

[The Government is asked to report in detail in 2002.]

Kazakhstan (ratification: 1996)

The Committee notes the Government's reports on the application of the Convention. It will examine them in detail at its next session.

The Committee also notes the comments made by the Air Crew Trade Union of Alma Ata. The union indicates that 80 staff of Kazakhstan civil aviation who suffered occupational illness and became disabled as a result of noise and vibration in excess of the permitted levels, and members of the families of air crew staff who have been killed, have been awarded compensation from the State National Company NAAK "Kazakhstan aue zholy". On 20 August 1996, by a Government Decree and on the basis of NAAK assets, the state national airline "Air Kazakhstan", a closed joint stock company, was established and the state shares were transferred to it. Air Kazakhstan now refuses to pay the compensation awarded to the staff on grounds that it does not regard itself as the legal successor to NAAK with regard to payment of the latter's debts, since there is no specific mention of this in its constituent documents. Under sections 46 and 47 of the Kazakhstan Civil Code, if state-owned means of production are transferred, any obligations in respect of compensation to workers who become disabled as a result of work are also transferred. No mention of this was made in either the Government Decree which is the transfer document, or in any other documents of the new company.

The union further states that in May 1997, the Prosecutor-General of the Republic of Kazakhstan acknowledged that the new law had been violated and proposed an appropriate amendment to the Government Decree and the company's constituent documents. However, the Government decided to go ahead with the closure of NAAK rather than bringing the Decree into conformity with the legislation. In February 1998, the NAAK was declared bankrupt. Under section 50(9) of the Civil Code, where such a company has insufficient assets to continue trading, the Government, as owner, is obliged to meet the legitimate demands of former employees of the state enterprise from its own funds, by returning part of the assets needed to meet the demands of creditors, especially citizens who have suffered loss because of the enterprise.

The union considers that, given sufficient goodwill, former aircrew members who are now disabled should have a legal basis for protecting their health and citizens below the age of majority should receive benefits for the loss of a parent.

The Committee recalls that *Article 11, paragraph 4, of the Convention* requires that rights of workers under social security or social insurance legislation should not be adversely affected in implementing the Convention. It therefore requests the Government to provide full particulars regarding the rights of the workers involved under social security or social insurance legislation that may have been adversely affected in this regard.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Brazil, Denmark, France, Germany, Kyrgyzstan, Slovakia, United Republic of Tanzania.*

Convention No. 149: Nursing Personnel, 1977

France (ratification: 1984)

The Committee notes the information contained in the Government's report.

1. Further to its previous comments concerning circular No. 20 of 4 May 1994, changing the methods for taking into account seniority and also service on humanitarian

missions abroad, the Committee notes the information provided by the Government that the above circular does not apply to the private sector. It also notes, from the information contained in the Government's report, that nursing personnel in that sector do not enjoy the status of employees of the public hospital service and that they are recruited under contracts of employment the conditions of which are determined in collective agreements negotiated by employers and representatives of employees. The Committee therefore requests the Government to provide copies of the above collective agreements.

2. The Committee notes the information provided by the Government concerning work schedules. It requests the Government to continue providing information on the application of adjusted working hours to all hospital centres and, in particular, on the debate on the organization and arrangement of working time in the context of the 35-hour week.

3. In its previous comments, the Committee noted that under section R.714-26-1 of the Public Health Code, members of the nursing care service committee are appointed by drawing lots among volunteers who must let the director of the establishment know that they are willing to stand. The Committee notes the information provided by the Government to the effect that the nursing care service committee was established to strengthen the participation and dialogue with nursing personnel in public health establishments. The Committee also notes the information provided by the Government on the method of appointing the members of the above committee by drawing lots. Furthermore, it notes that a protocol agreement was signed on 14 March 2000 between the Government and the representative organizations of nursing personnel. This agreement envisages the modification of this method of appointment and is due to be discussed with trade union organizations.

The Committee notes once again that *Article 5, paragraph 1, of the Convention* does not specify the role to be played by the representatives of nursing personnel in implementing the measures that must be taken, in accordance with methods appropriate to national conditions, to encourage consultation of such personnel in decisions concerning them. The above Article does not therefore *a fortiori* contain any provision respecting the methods of appointing representatives of the personnel. Nevertheless, the Committee recalls that Paragraphs 19(2) and 20 of the Nursing Personnel Recommendation, 1977, (No. 157), refer explicitly to the representatives of the personnel within the meaning of Article 3 of the Workers' Representatives Convention, 1971 (No. 135), which sets out specific procedures for the appointment of these representatives, who must be designated or elected by trade unions or by members of such unions or freely elected by the workers in the enterprise.

The Committee requests the Government to provide information on the discussions concerning the modification of the method of appointing members of the nursing care service committee which are to be held with trade union organizations under the terms of the protocol agreement signed by the Government and the representative organizations of nursing personnel. It also requests the Government to provide information on the participation of representative organizations in nursing care service committees.

The Committee is also addressing a request directly to the Government on certain matters.

Guyana (ratification: 1983)

The Committee notes the brief information provided by the Government in its reports.

Article 1, paragraph 2, of the Convention. In its previous comments, the Committee noted the Government's statement that the conditions of work of nursing personnel in private hospitals are regulated by collective labour agreements entered into between individual hospitals and the recognized unions. It also noted that a committee had been set up to monitor all private hospitals. The Committee once again requests the Government to provide copies of collective agreements covering nursing personnel in private hospitals. It also once again requests the Government to provide information on the results of the work of the committee set up to monitor private hospitals.

Article 1, paragraph 3. The Committee notes the information supplied by the Government that the national legislation does not provide specific rules for voluntary nursing personnel and that, for the time being, no measure is envisaged to remedy the situation. The Committee once again recalls that, according to a previous report, such personnel are not covered by the Nursing Code of Conduct. The Committee therefore hopes that the Government will soon provide information concerning the measures which have been taken or are envisaged to give effect to the Convention on this matter.

Article 2, paragraph 2(b) (in conjunction with Article 5, paragraphs 2 and 3, and Article 6(a)-(g)). The Committee notes the Government's indication in its report that collective agreements and the law determine the working conditions of nursing personnel. However, the Committee once again notes with regret that copies of the collective agreements applicable to nursing personnel in the public and private sectors, as regards conditions of employment and work and the settlement of collective disputes, have not been received by the Office. It hopes that the Government will shortly provide the relevant documents and that it will indicate at the same time whether other measures have been taken to attract and retain nursing personnel in the profession.

Article 7. The Committee notes the information provided by the Government to the effect that the Occupational Health and Safety Act does not contain any provision respecting the human immunodeficiency virus (HIV), but that it requires employers to provide a safe working environment. The Committee notes that, according to the Government, general measures are taken in relation to the HIV risk. However, the Committee once again reminds the Government of the indication in its general observation of 1990 on the application of this Convention that nursing personnel work in an environment in which, by reason of the work, there is a high risk of accidental infection with HIV and that, consequently, particular attention should be paid to the working conditions and health protection of such personnel.

The Committee once again requests the Government to indicate the measures which have been taken or are envisaged to improve the existing legislative provisions on occupational health and safety so as to take account of the particular risk of accidental exposure to HIV among nursing personnel, and to adapt these provisions to the particular characteristics of the work and environment of nursing personnel.

The Committee hopes that the Government will take all the necessary measures to respond appropriately to the various matters raised by the Committee.

Poland (ratification: 1980)

The Committee notes the comments made by the Trade Union of Medical Analysis Technicians and the National Trade Union of Nurses and Midwives alleging failure to apply Convention No. 149. The comments were sent to the Government on 24 July and 11 September 2000, respectively. However, the Office has not received the Government's observations. Pending the Government's reply, the Committee will refer to the abovementioned communications.

According to the Trade Union of Medical Analysis Technicians, the public authorities are not enforcing the Convention satisfactorily. They have no effective policy to provide nursing staff with satisfactory employment and work conditions including career prospects and decent salaries that would attract and retain staff able to provide services of a quantity and quality such as to secure the highest possible level of medical care for patients.

The National Trade Union of Nurses and Midwives, for its part, alleges that the violation of nurses' rights is notorious. In its comments, the above union emphasizes that:

- salary levels are inadequate in relation to the work performed;
- employers do not comply with the legislation and ignore nursing circles;
- employers do not comply with basic health and safety principles;
- work conditions are deteriorating;
- salaries continue to drop;
- acquired rights are taken away;
- employers force nurses and midwives to change their employment, work and salary conditions for less favourable ones;
- the Health Ministry has adopted virtually no legislation on the employment, working and salary conditions of nurses and midwives or on their education;
- working conditions are not in conformity with safety requirements.

The same union alleges that no legal protection is anticipated for nurses and midwives in connection with the health-care reform despite the fact that the Health Ministry should expect the emergence of legal situations unfavourable for this group of workers.

The Committee hopes that the Government will send its observations on the comments made by the Trade Union of Medical Analysis Technicians and the National Trade Union of Nurses and Midwives so that the Committee can examine these matters at its next session in 2001.

[The Government is asked to report in detail in 2001.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Egypt, France, Ghana, Guinea, Iraq, Jamaica, Kyrgyzstan, Latvia, Philippines, United Republic of Tanzania.*

Convention No. 150: Labour Administration, 1978*Burkina Faso (ratification: 1980)*

The Committee notes the Government's reports for the period ending May 2000 and the annexed documentation.

The texts provided and the legislation available to the ILO bear witness to the legislative efforts made over recent years with a view to developing a labour administration system progressively covering workers considered to be salaried employees under the legislation, as well as other categories of workers, such as those working in the informal sector. In this respect, the Committee notes with interest the provisions of Decree No. 97-93 of 7 March 1997, which are reproduced in Decree No. 2000-358 of 28/2000, establishing, within the Ministry of Employment, Labour and Social Security, a central directorate and external services responsible for relations with the informal sector and to assist in promoting the activities carried out in the sector through training activities, financing and the stabilization of jobs within the context of the national labour policy. The Committee also notes Decree No. 96-17 of 30 January 1996 establishing a National Technical Advisory Committee on Health and Safety, which is of tripartite composition, with representatives of ministerial departments discharging functions related to the labour administration policy; Decree No. 97-101 of 12 March 1997 establishing the composition, mandate and operation of an Advisory Labour Commission responsible for issuing opinions on any matter relating to labour legislation, the opinion of which is required in a large number of cases related to the fields of labour administration; Order No. 98-49 of 19 October 1998 determining the responsibilities, organization and functioning of the directorate of the Training and Further Training Centre, which comes under the responsibility of the Ministry of Infrastructure, Housing and Urbanization, and works closely with international organizations and the Ministry responsible for employment; Decree No. 98-533 of 31 December 1998 establishing a Support Fund for Employment Promotion (FAPE) and determining its responsibilities, organization and functioning as a fund entrusted with promoting employment creation, consolidating existing jobs through projects, ensuring the recovery of the financing allocated to promoters and seeking funding; and Decrees Nos. 98-535 and 536 of 31 December 1998 respecting the National Support Programme for the Reintegration of Retrenched Workers. The Committee also notes that Decree No. 99-506 of 31 December 1999, adopting the strategy for the promotion of craftworkers, takes into account the contribution of the informal sector and refers to the Labour Code with regard to employees and craftworkers; the Committee would be grateful if the Government would provide information on the precise measures taken in practice by the directorate for the promotion of the informal sector and on the results achieved in terms of knowledge of the sector (*Article 7 of the Convention*). It would also be grateful if the Government would provide detailed information on the progress made in the process of establishing the National Advisory Labour Commission, the National Technical Advisory Committee on Health and Safety, the Training and Further Training Centre referred to above (*Article 5*), the Employment Promotion Support Fund (FAPE) and the National Support Programme for the Reintegration of Retrenched Workers (*Article 6(2)(b)*).

The Committee is also addressing a request directly to the Government on other matters.

Congo (ratification: 1986)

The Committee notes the Government's reports for the period ending in September 1999, and the documents attached thereto.

The Committee takes note of Decree No. 92-178 of 16 May 1992 establishing the attributions of the Ministry of Employment, Labour, Social Action and National Solidarity as the body responsible for devising and executing state policy on employment, labour, social action and national solidarity and for the organization of public services and establishments. It notes with interest that the above Ministry is responsible for guiding the education services in their vocational and technical training policy in order to match training and employment needs, for organizing and supervising the employment market and for providing vocational training for adults, and retraining and further training for state workers and employees. It is also in charge of organizing and promoting social action to benefit all strata of Congolese society, initiating all kinds of measures to promote employment, vocational training, work, social action and national solidarity, the various functions being distributed between the central directorates. The Committee notes that the Decree also provides for the adoption of specific texts concerning the various bodies under the Ministry's control.

In its report for 1995, the Government indicated that the practical difficulties encountered in applying the Convention were for the most part linked to the economic and financial situation, and exacerbated by the requirements of structural adjustment which are affecting the resources of the labour administration. In the same report, in reply to the Committee's comments on the application of *Article 10*, the Government stated that, owing to these constraints, it was not planning to adopt specific statutes which would have the effect of increasing state expenditure, and indicated that there would be severe cuts in labour administration staff pursuant to texts establishing the removal from office of certain public service employees. The Committee also notes from an activities report of the Niari regional labour directorate for 1994, sent by the Government, that owing to the economic and financial situation "the budgets for operating services exist only on paper", and that some subsidies were paid sporadically and were used mainly to purchase essential office equipment. According to the same report, there is a serious lack of office equipment, premises are rundown and vehicles are non-existent.

The Committee takes note of Act No. 8-96 of 6 March 1996 to amend the Labour Code. Section 131 of the Act provides among other things for a National Technical Commission for Health, Safety and the Prevention of Occupational Risks, to be composed of representatives of the Government, employers and workers as well as qualified experts. The Act also provides for a decree to be issued establishing the composition and operation of the said commission. According to section 145, workers and their families are to have daily access to a medical service and, under section 156-2, the labour inspector is to be assisted by the medical labour inspector in the supervision of legislative or regulatory prescriptions concerning occupational health and medicine in enterprises. The Committee also notes that, according to section 170, the National Labour Advisory Commission, which is tripartite, may call, for consultation purposes,

on public servants or persons with economic, medical, social and ethnographic qualifications. The same provision states that a decree will establish the membership and requirements for the organization and operation of the commission. Section 173 provides that in every enterprise employing seven or more workers, personnel representatives must be elected and that an order will establish the amount of working time accorded to representatives to carry out their duties, the resources to be made available to them and the conditions in which they will be heard by the employer or his representative.

The practical implementation of the legislative provisions thus adopted to organize a cohesive and coordinated administration system and to provide services that ensure optimum labour market and working conditions necessarily implies that human resources and material and financial means must be made available to the abovementioned Ministry when decisions are taken regarding the annual budget. In view of the economic and financial situation referred to by the Government and the obstacles to the recruitment of public servants arising out of structural adjustment, the Committee asks the Government to indicate the measures taken under the abovementioned texts, to provide copies of any relevant documents and to indicate how it plans to attain the objectives it has set itself regarding labour administration.

The Committee takes due note of the information supplied by the Government concerning the technical assistance activities carried out by the ILO with cooperation from the UNDP and other donors to reorganize and streamline some labour administration services as part of the programme being implemented to develop the private sector and promote SMEs. The Committee also notes the ILO's technical assistance activities for the organization, financial analysis and actuarial evaluation for the reform of the National Social Security Fund, and the reorganization of employment management to set up suitable vocational training facilities as well as structures for assistance, advice and financing. The Committee would be grateful if the Government would supply information on the development of these activities and the results obtained, and in particular on the establishment of the logistical support group announced in the 1995 report which was to provide the labour administration with assistance in operating the National Labour Advisory Commission.

In its 1999 report, the Government indicates that two seminars on the prevention of occupational risks and the management of industrial relations and social conflicts were organized under the aegis of the ILO and the African Regional Centre for Labour Administration (CRADAT) for labour administrators and chief labour inspectors. The Government is asked to provide particulars of the practical impact of these seminars.

Mexico (ratification: 1982)

The Committee takes note of the Government's report for the period ending on 30 June 1999 and the attached documentation. According to the Government, the Confederation of Employers (CONCAMIN) states that it participated, together with the Secretariat of Labour and Social Protection and local authorities, in organizing activities related to the national employment policy, and in setting up several councils and committees on training, occupational safety and health, minimum wage fixing and workers' share in company earnings. CONCAMIN indicates that it also participated in setting up programmes for the improvement of personnel training and company productivity (CIMO and PROBECAT). The Committee notes from the Government's

report that, according to the view of the Confederation of Mexican Workers (CTM), the Secretariat of Labour and Social Welfare (STPS) has sole competence for the Convention, which would seem to suggest that workers are not called on to cooperate in its application. The Committee points out to the Government that the involvement of the social partners in the system of labour administration should not be merely fortuitous and that, pursuant to *Article 5 of the Convention*, arrangements must be made to secure consultation, cooperation and negotiation between the public authorities and the social partners. *Article 6(2)(c)* further specifies that the competent bodies within the system of labour administration should, amongst other things, make their services available to employers and workers with a view to promoting, at national, regional and local levels as well as at the level of the different sectors of economic activity, effective consultation and cooperation between public authorities and bodies and employers' and workers' organizations and between such organizations. The Committee would be grateful if the Government would indicate how the participation of workers' and employers' organizations is promoted by the competent bodies of the labour administration system.

Tunisia (ratification: 1988)

The Committee notes the Government's report and the information provided in reply to its previous comments, as well as the copy of Decree No. 93-2409 of 29 November 1993 reorganizing the Ministry of Planning and Regional Development. It also notes with satisfaction the legislative measures taken in recent years to develop the legal and institutional framework of a system of labour administration, in accordance with the objectives of the Convention. It notes Act No. 93-10 of 17 February 1993 respecting vocational training policy, with the objectives of the development of human resources, social and vocational development and the achievement of the objectives of growth and which, among other measures, establishes a national vocational training and employment council, specialized commissions and sectoral and regional vocational training and employment councils. The Committee also notes Act No. 93-11 of 17 February 1993 establishing the Tunisian Employment Agency and the Tunisian Vocational Training Agency, whose missions contribute to the promotion of employment and initial training for young persons and adults, taking into account economic and social needs. Finally, the Committee notes the establishment by Act No. 93-12 of 17 February 1993 of a national training centre for trainers and training methodology and a national centre for further training and career development. The Committee also notes the adoption of Act No. 96-62 of 15 July 1996 establishing the National Social Dialogue Commission. This Commission is entrusted with the task of issuing opinions on the various labour issues, international labour standards, wages, occupational classification, collective bargaining and the social climate and supplements the many consultative structures on specific issues, such as the National Council for the Prevention of Occupational Risks and the National Council for the Disabled. The Committee notes that the above Act envisages the possibility of approving vocational training structures managed by private bodies or persons under the control of the Ministry responsible for vocational training. The Committee would be grateful if the Government would indicate the texts which have been issued under these laws and decrees, in accordance with the provisions in which they are envisaged, and if it would provide copies, where appropriate.

The Committee is also addressing a request directly to the Government on a question of a general nature.

Uruguay (ratification: 1989)

The Committee notes the Government's report for the period ending June 1999. With reference to its observation of 1996 relating to the representation made to the ILO by the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) and the National Single Trade Union in Construction and Similar Activities (SUNCA) concerning the safety situation in the construction sector and the resulting high incidence of employment accidents, the Committee notes the relevant information and the full documentation transmitted by the Government with its report on the application of Convention No. 81. This information shows that important measures have been taken to give effect to the recommendations of the Committee set up to examine the representation, whose report was adopted by the Governing Body. The Committee notes with interest the substantial development in the human and material resources of the relevant services of the labour administration, as well as the adoption of relevant legislative provisions and awareness-raising campaigns for workers and employers on occupational risks using the media and with the active participation of the trade unions. The Government also provides information concerning the technical and financial cooperation of many national, foreign and international public and private institutions, with the participation of employers' and workers' organizations in the construction sector. The Committee notes with interest, in particular, the establishment of specific inspection and training programmes in the field of occupational safety in collaboration with the Inter-American Research and Documentation Centre on Vocational Training (ILO-CINTERFOR). However, the Committee notes that, according to the Government, despite the significant progress made as a result of the implementation of measures in the field of occupational safety, the number of employment accidents remains abnormally high, and it would be grateful if the Government would continue to provide information on any measures which have been taken or are envisaged in the areas covered by the Convention with a view to improving occupational safety conditions, not only in the construction sector, but also in other sectors of activity.

The Committee is addressing a request directly to the Government concerning certain provisions of the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: *Australia, Belarus, Burkina Faso, Costa Rica, Cuba, Cyprus, Democratic Republic of the Congo, Egypt, Germany, Greece, Guinea, Guyana, Iraq, Israel, Jamaica, Republic of Korea, Namibia, Netherlands, Portugal, Sweden, Tunisia, Uruguay, Zambia, Zimbabwe.*

Convention No. 151: Labour Relations (Public Service), 1978

Azerbaijan (ratification: 1993)

The Committee notes the information provided by the Government in its report.

The Committee also notes that for a number of years the Government has been referring to a Bill on public servants which had been submitted to Parliament for adoption. In its most recent report, the Government again states that this Bill, which in its view fulfils the requirements of the Convention, is being examined by Parliament.

While again expressing the hope that the Bill submitted to Parliament is in full conformity with the Convention and that it will be adopted in the near future, the Committee regrets that the Government has not yet sent the Bill for its consideration and once again requests it to do so.

Cyprus (ratification: 1981)

The Committee takes note of the comments made by the Pancyprian Public Employees' Trade Union (P.A.S.Y.D.Y.) and the Government's response thereto. The P.A.S.Y.D.Y. alleges that the Executive Authority submitted to the Legislature for enactment into law a Bill concerning the introduction of a national health scheme (NHS) despite the absence of serious, good faith, intensive and exhaustive negotiations in the Joint Staff Committee – the official body for collective bargaining and the determination of salaries and conditions of employment in the Cyprus civil service. The P.A.S.Y.D.Y. also notes the failure by the authorities to refer the dispute concerning the NHS to arbitration, as provided by the Joint Staff Committee regulations. According to the P.A.S.Y.D.Y., the Government proceeded summarily, arbitrarily and unilaterally to submitting the Bill to the Legislature, despite the practice in Cyprus of giving priority to direct negotiation between the parties to the dispute.

The Government asserts that the issue of the introduction of a new NHS was repeatedly discussed in a number of meetings of the Joint Staff Committee where the two parties failed to bridge their differing views. According to the Government, the enactment of the NHS Bill in its original form was inevitable, considering the refusal of the trade union to participate in the negotiations and its intention to proceed to industrial action. Finally, the Government explains its failure to refer the dispute to arbitration by the fact that not all procedures had been exhausted and that the consent of both parties is required for such a procedure. Furthermore, the P.A.S.Y.D.Y. demonstrated repeatedly a clear unwillingness to commit itself to this procedure. Therefore, the Government considers that it acted in compliance with the relevant provisions of the constitution and rules of the Joint Staff Committee thus fulfilling its obligations under the Convention.

While noting the conflicting statements of the Government and the P.A.S.Y.D.Y., the Committee cannot but recall the importance of genuine and constructive consultation or negotiations when seeking to revise or adopt legislation in the field of labour law.

Uruguay (ratification: 1989)

The Committee notes the Government's report.

The Committee regrets that the Government's report does not refer to the following matters, which were raised in its previous observations.

1. The Committee had requested the Government to examine the possibility of modifying the composition of the Permanent Industrial Relations Committee (which has five members: two representatives of the executive, appointed by the Ministry of the Economy and Finance and by the Planning and Budget Office; two designated by the

most representative organizations of public servants; and the Minister of Labour and Social Security), which appears to be unsatisfactory due to an imbalance between the representatives of the authorities and of the most representative trade union organizations.

2. The Committee had also referred to the competence of the Permanent Industrial Relations Committee which, in accordance with section 739 of Act No. 16736, includes "advising on conditions of employment and other matters covered by international labour Conventions". However, in practice the above Committee only discharges mediation functions which, in the opinion of the Committee of Experts, is unsatisfactory.

3. In view of the Government's previous indication that major collective agreements had been concluded in some state bodies, the Committee had requested the Government to provide information on the machinery whereby representatives of public employees may take part in determining the terms and conditions of employment of public employees, as well as on the contents, territorial scope and the categories covered by the collective agreements concluded within the context of the public administration during the period covered by the report.

The Committee requests that the Government provide information in its next report on all these matters.

4. Finally, the Committee notes that the PIT-CNT has forward observations on the application of the Convention in communications dated 30 December 1999 and 25 January 2000. The Committee requests the Government to forward its comments in this respect.

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In addition, requests regarding certain points are being addressed directly to the following States: *Mali, Spain*.

Convention No. 152: Occupational Safety and Health (Dock Work), 1979

Requests regarding certain points are being addressed directly to the following States: *Iraq, United Republic of Tanzania*.

Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979

A request regarding certain points is being addressed directly to *Iraq*.

Convention No. 154: Collective Bargaining, 1981

Requests regarding certain points are being addressed directly to the following States: *Gabon, Uganda*.

Convention No. 155: Occupational Safety and Health, 1981*Brazil (ratification: 1992)*

1. The Committee notes the comments communicated by the Democratic Federation of Shoemakers of the State of Rio Grande do Sul and the Union of Workers in Shoe Industry of Dois Irmãos and MORRO Reuter. These comments are intended to denounce publicly the employers in the sector (the Brazilian Association of Shoe Industry) for having put pressure on the Federal Government to withdraw the classification as category three of risk of the sector. This classification of risk of the sector was a historic attainment of workers after many years of sustained efforts and struggles. It was withdrawn summarily, in an authoritarian way and without consultations with workers. While these enterprises were seeking the withdrawal of the classification of risk of the sector, in some enterprises workers were obliged to note down the time with the production supervisor when they needed to go to the restrooms. In some enterprises there are even more serious situations where the post of supervisor having been eliminated, they have adopted a system whereby the production line continues until the break when all the workers have to leave their workplaces to go to the restrooms. This is inadmissible because there is only one break in the morning and another one in the afternoon. When workers need to go to the restroom other than outside these times, they are obliged to wait for the break. This could damage their health and cause them suffering and sickness. There is also the humiliation inflicted by the management of the enterprise H. Kuntzler Co. Ltd. on employees who were absent from work due to illness and other reasons. In one enterprise they even display publicly on walls the pictures of such employees. As if this was not enough, this enterprise obliges employees to work all day on Saturdays even when the big majority was against it. The same enterprise has threatened to dismiss those who refuse work at night and on Saturdays. It has carried out these threats with immediate effect on those concerned. Those who continue to work on such conditions complain constantly but privately and are afraid to say so to the supervisor for fear of losing their employment.

The union has tried on various occasions to negotiate with the management of the enterprise H. Kuntzler Co. Ltd. but without any success. Many other trade unions have protested in front of the enterprise against the manner in which the enterprise has been treating and insulting the workers. The union asks for a rigorous control of this intolerable situation in the sector.

In its reply the Government indicates that verifications carried out at the H. Kuntzler Co. Ltd. uncovered only a certain amount of excess hours worked per day that might violate section 59 of the Consolidation of Labour Laws (CLT). It states that other checks were made at other enterprises in the municipal region of Dois Irmãos including in workshops where no irregularities were discovered. However, the inspectors all the same provided indications on the manner of complying with the requirements of the laws in this regard.

The Government further indicates that the president of the Democratic Federation of Shoemakers of the State of Rio Grande do Sul was invited to elaborate on the contents of the union's complaint. He essentially indicated a request for a seminar to fully discuss the degree of risk in the shoe industry in accordance with prior understandings reached with the technical staff dealing with the sector in the Ministry of Labour and

Employment in Brasília. Such a seminar accordingly took place on 28 October 1999 where all the trade unions and employers of the sector in the State were invited. Strangely the president of the Democratic Federation of Shoemakers of the State of Rio Grande do Sul did not participate. He sent a letter expressing disagreement with the contents of the seminar, which in his view, should have been elaborated with the participation of the workers. He then suggested 3 December 1999 as the date he preferred for the seminar. According to the officials concerned, at the time they attempted their verification on the four enterprises working in the sector in this State, two were on annual holiday closure. The other two, namely Calcados Maide Ltda. and Industria de Calcados Wirth Ltda., were inspected, but no restrictions regarding the use of and access to toilets by workers of the type indicated in the complaint were observed. The officials reiterated nonetheless the need to maintain free access to toilets for the workers.

The Committee would be grateful if the Government would continue to provide more particulars regarding any follow-up measures that were taken or envisaged as result of the seminar on occupational safety and health in the shoe industry in the State and if other similar seminars have taken place since.

The Committee recalls the comments made by the Democratic Federation of Shoemakers of the State of Rio Grande do Sul that the Government has withdrawn the classification as category three of risk of the sector, without consultations with workers. It would be grateful if the Government would communicate its views in this regard, taking into account the requirements of *Articles 4 and 8 of the Convention*, that the formulation, implementation and periodic review of a coherent national policy on occupational safety and health and the working environment, as well as the taking of steps by means of laws or regulations or any other method to give effect to such a policy, should be done in consultation with the most representative organizations of employers and of workers.

The Committee would be grateful if the Government would continue to provide further information with respect to workers' access to toilet facilities in shoe industry enterprises in the State of Rio Grande do Sul, as well as regarding the results of any inspection visits conducted of the two enterprises that were closed up for annual holidays when the initial inspection was attempted in order to verify the union's complaint in this regard, taking into account the requirements of *Article 9*.

2. The Committee notes the information provided by the Government partly replying to its observation of 1999 based on the comments submitted by the Union of Workers from the Marble, Granite and Lime Industry of the State of Espírito Santo (SINDIMARMORE). In any event, the Committee expresses its preoccupation with the bad conditions of work prevailing in this sector of economic activity in the country. This sector, which according to the Government accounts for 80 per cent of such Brazilian exports, should have been able to offer workers better conditions of work. The Committee emphasizes the fact that according to the report of the delegate of the Ministry of Labour of the State of Espírito Santo, two more deaths among the workers have been reported on 10 November 1999. According to the same report, these deaths are the result of the absence of measures that ensure occupational safety and health in the marble and granite industry. The Committee hopes the Government will provide with its next report more ample information on the measures adopted with a view to reinforcing

occupational safety and health measures in this industry. The Committee will examine these questions comprehensively in 2002 along with the rest of the information requested from the Government in its 1999 observation.

[The Government is asked to report in detail in 2002.]

Czech Republic (ratification: 1993)

The Committee notes with interest the Government's reply to its previous comments referring to earlier observations made by the Czech-Moravian Chamber of Trade Unions (CMKOS) essentially relating to the required measures for the formulation, implementation and periodic review of a coherent national policy on occupational safety, occupational health and the working environment (*Article 4 of the Convention*). The Government indicates in its reply that the amendment to the Labour Code will probably enter into force on 1 January 2001, and that a copy will be sent to the Office when it is approved. It indicates that the amendments change in important ways the parts concerning safety and health at work.

The Committee further notes with interest the information that the Czech Republic is bound by its association with the European Union to harmonize its legislation with the European Union legislation in the field of safety and health at work. Comparative analysis of EU Directives has been completed and the basic principles and requirements in this field demanded by EU have been included in the amendment to the Labour Code, and a number of by-laws containing technical details concerning EU Directives will be issued based on the Labour Code and the new law on protection of public health.

The Committee also notes with interest the information that the comparative analysis of safety and health at work management models in the EU countries is being finalized and that the management model in the Czech Republic will be formulated on the basis of this comparative analysis.

The Committee notes with interest the information that the Czech Office for Safety at Work, an institution founded by the Ministry of Labour and Social Affairs, is currently working on the draft law on labour inspection. It also notes with interest the information that one of the priorities covered by the Ministry of Labour and Social Affairs strategy plan up to 2002 is safety and health at work. The Government's report indicates that in order to ensure the protection and improvement of the working environment it is vital to develop and implement a national plan for the protection of the working environment, which, for its implementation, will require the establishment of: (a) realistic and achievable objectives and targets; (b) an approach that is effective and can be monitored with regard to progress in meeting the objectives, including both timing and economic costs/benefits; (c) institutional implementation; (d) resources (human, technical and financial); and (e) enforcement mechanisms.

The Committee hopes that the abovementioned laws and regulations and other measures will be adopted shortly and that copies of the adopted texts will be sent to the Office.

The Committee is addressing a number of other points to the Government in a direct request.

Mexico (ratification: 1984)

With reference to its previous observation, the Committee notes with interest the adoption of the General Regulations respecting inspection and the imposition of penalties for violations of labour legislation, of 6 July 1998. It also notes that 116 Official Mexican Occupational Safety and Health Standards have been adopted. In particular, in recent years, the following standards have been adopted: NOM-122-STPS-1996, NOM-121-STPS-1996 and NOM-026-STPS-1998. These standards reflect, among other initiatives, the action taken by the Government to apply the national occupational safety and health policy. The Committee requests the Government to continue providing information on the laws and regulations adopted which contribute to defining and implementing an occupational safety and health policy.

The Committee also notes with interest the measures taken by the Government to launch programmes of preventive action for the reduction of employment accidents and diseases. It notes in particular the programme "Self-management of safety and health in work centres". It notes that technical assistance workshops have been held to facilitate preventive programmes and evaluation guides, that preventive measures and standards have been disseminated through the review *Condiciones de trabajo* and other media (radio and television), and the other training activities carried out by the Mexican Social Security Institute and other institutions, including academic institutions.

Finally, the Committee notes with interest the copy which was provided of the court decision establishing case law relating to the right of workers to be protected when they withdraw on justifiable grounds from their place of work because they consider that there is an imminent and serious danger to their life or health (*Articles 13 and 19(f) of the Convention*).

The Committee refers to other matters in a request addressed directly to the Government.

Spain (ratification: 1985)

1. The Committee notes the comments made by the General Union of Workers (UGT) regarding the situation of occupational accidents in Spain. The union states that each time a greater number of people lose their lives as a result of accidents at work. Currently 4.22 such deaths are registered per day. Spain has the highest number of occupational accidents in Europe. Between January and September 1999 a 17 per cent increase in the number of accidents was recorded compared to the same period in 1998 and mortal accidents increased by 4 per cent. From January to September 1999, 1,235,659 accidents were recorded (688,341 involved loss of work days while 547,318 did not), of which 1,103 were mortal ones. This situation is a clear sign that the Government of Spain is in violation of Convention No. 155. The Government of Spain continues not to take the measures foreseen by the action plan against occupational accidents as well as those called for by the law on the prevention of occupational risks itself, and employers continue not to comply with the law. More than 53 per cent of enterprises do not carry out risk assessment. In fact since the entry into force of this law on risk prevention in 1996, and up to 1998, accidents resulting in loss of working days grew by 22.17 per cent and those resulting in death grew by 9.06 per cent.

The UGT considers the main causes of the increase of accidents at work to be the precarious nature of conditions of work, the failure of employers to fulfil their responsibilities, and the disinterest shown by the Government. In its view, during the preceding year, the Government limited itself to announcing future measures and taking bureaucratic steps to establish some kind of institution already foreseen in the action plan as well as in the law on prevention of occupational risks, such as the Foundation for the Prevention of Occupational Risks, but nothing has started functioning. Neither was the National Plan for Training in Occupational Accidents Prevention developed during this period, nor did the meeting foreseen between the Auditor-General of the State and the Office of the Presidency of the National Commission on Occupational Safety and Health take place. This lack of coordination between the various administrations to facilitate the implementation of the plan is provoking a slowdown in the attainment of its objectives.

The UGT states that labour inspection should have increased its activities and the quality of these activities in order to ensure the implementation of the law by the employers and the Auditor-General of the State should have pursued infractions of standards on the safety and health of workers. Currently there is no efficient planning being done regarding the tasks of labour inspection.

Many of the occupational accidents result from the non-fulfilment of their responsibility on the part of management that could fall under penal responsibility. The Penal Code of Spain labels such behaviour as penal offences (sections 316, 317 and 318). However, the representatives of the auditors emphasize that such misconduct remain unpunished because they are usually dealt with by the system of justice for offences or misdemeanours (*Justicio de Faltas*) and do not have "the required guarantees, time limit, expertise and counter expertise required to provide evidence of the facts" and that furthermore, "if the labour inspection has not fulfilled its assignment, the Auditor-General's Office cannot function because it is deprived of the most abundant and the most reliable source of information.

The Committee would be grateful if the Government would address the questions raised by the UGT in order to permit the Committee to assess the situation in a more complete way.

2. The Committee notes the comments made by the Democratic Confederation of Labour (CDT-Morocco) evoking the context of the attack against migrant Moroccan workers and their families in El Ejido in an atmosphere of xenophobia, racism and intolerance. It then recalls that Convention No. 155 provides for the elaboration and implementation of a national policy that has as its aim the prevention of accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing the causes of hazards inherent in the working environment. It indicates that 13,000 Moroccan workers work in the Province of Almeria in Spain, and 95 per cent of them are engaged in the agricultural sector. The owners of the farms employ these migrant workers in greenhouse plantations where the temperatures reach 50 degrees centigrade and the use of pesticides results in lung ailments and skin diseases among the workers. Press coverage of the incidents referred to the fear shown by some of these workers to openly complain about their working and living conditions for fear that their irregular status would be discovered.

The Government in its reply to these comments indicates that 13,422 Moroccan residents have been regularized up to 31 March 2000, and that they, along with the rest of the migrant workers of 112 different nationalities, enjoy the same legal labour rights and the same protection under the laws and collective agreements regarding labour and social security rights as Spanish citizens.

The Government further indicates that, although it recognizes that working conditions in the greenhouses are difficult due to high temperatures and the handling of pesticides, it maintains that all Moroccan and Spanish workers are protected by occupational safety and health standards as well as the provision of the required personal protective equipment which, if not provided, can be reported to the provincial labour inspection or the labour court. Furthermore, the Government adds that these same harsh conditions due to intensive greenhouse cultivation practices have been faced and shared by the Spanish workers and all workers of other nationalities for over 20 years. In relation to the application of collective agreements, the Government states that there is a firm agreement between the agricultural organizations and the trade unions to ensure the scrupulous implementation of this agreement and that labour and social security inspectors will contribute to this.

The Committee welcomes the regularization of the rest of the migrant workers in question which it hopes will permit their inclusion in all the measures the Committee hopes the Government will soon take to ensure that the admittedly harsh conditions of work and the precarious occupational safety and health conditions will be improved. It hopes the Government will continue to follow up the situation closely and that it will keep the Office informed of all developments in this regard.

Sweden (ratification: 1982)

Further to its previous comments, which were based on the observations of the Swedish Trade Union Confederation, the Committee notes the reply contained in the Government's report. The Government states that the labour market parties always participate in the drafting of provisions issued by the National Board of Occupational Safety and Health, and this participation takes place through tripartite working groups and also through a consultation procedure. It adds that the labour market parties are consulted before the Board's directorate makes decisions.

The Committee recalls the observations of the Swedish Trade Union Confederation that, as a result of a government resolution, the central parties on both sides have not been represented on the regional supervisory bodies (Swedish Employers' Confederation - SAF - nominees having left the boards of all decision-making government authorities), and tripartite representation within the Work Environment Fund and on the governing bodies of testing and inspection organizations such as WEDAC and the National Testing and Research Institute had ceased for the same reason. The Trade Union Confederation had also indicated that complying with the requirements of *Articles 4 and 5 of the Convention* had become correspondingly difficult.

The Committee would be grateful if the Government would respond to this comment of the Swedish Trade Union Confederation, taking into account the requirement of *Article 4, paragraph 1*, of the Convention for consultation with the representative organizations of employers and workers in the formulation, implementation and periodic review of national policy on occupational safety and health.

Venezuela (ratification: 1984)

With reference to its previous comments, the Committee notes that a committee has been named by the President to prepare a new draft of regulations under the Organic Act respecting prevention and working conditions and the environment (OPCYMAT). It notes that the preparation of the said draft regulations has been completed in consultations with and the participation of employers and workers, and that they will be submitted to the Council of Ministers shortly for its consideration and approval. The National Institute for Prevention and Occupational Safety and Health will implement these regulations. The Committee hopes these regulations will be adopted shortly and a copy of the adopted text sent to the Office. It hopes these will enable the Government to address the Committee's previous comments which read as follows:

Article 4 of the Convention. The Committee recalls that the Government had reiterated on various occasions that it would adopt the necessary measures to develop a coherent national policy on occupational safety, occupational health and the working environment. The Committee recalls that it has been urging the Government since 1990 to adopt the necessary measures to give effect to this provision of the Convention. The Committee therefore hopes that the Government will be able to provide detailed information in its next report on the measures which have been taken with a view to the formulation of a coherent national policy on occupational safety, occupational health and the working environment, in consultation with the most representative organizations of employers and workers, as envisaged by this Article of the Convention.

Article 5. The Committee recalls that, in accordance with this Article, account shall be taken, when formulating the coherent national policy on occupational safety, occupational health and the working environment, of the relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers (*point (b)* of this Article of the Convention), as well as communication and cooperation at the levels of the working group and the undertaking and at all other appropriate levels up to and including the national level (*point (d)* of Article 5 of the Convention). The Committee notes the information provided by the Government concerning the functions of occupational safety and health committees and the activities of the labour inspectorate in relation to these committees and it once again requests the Government to provide detailed information on the measures adopted to give effect to the above points of this Article of the Convention.

Article 8. The Committee hopes that the Government will be able to indicate the adoption, in its next report, of the regulations to be issued under the Organic Act respecting prevention and working conditions and environment (OPCYMAT), which it has been announcing for many years. The Committee also hopes that, as it has already indicated on other occasions, the adoption of the above regulations will contribute to strengthening supervision of the manner in which laws and regulations on occupational safety and health and the working environment are applied through an adequate and appropriate system of inspection (*Article 9*).

Article 11. The Committee notes with interest the document entitled "Industrial health and safety programme - General aspects - COVENIN Standard No. 2260-88" in relation to the application of this Article. The Committee requests the Government to provide information on the measures adopted so that the competent authorities can ensure the determination of health hazards due to the simultaneous exposure to several substances or agents (*point (b)* of this Article) and the publication, annually, of information on measures taken in pursuance of the national policy on occupational safety, occupational health and the working environment (*point (c)* of this Article).

Article 12(b) and (c). The Committee regrets to note that the Government has not replied to its request concerning this Article of the Convention. It once again requests the Government to provide information on the measures adopted to give effect to this Article, which concerns compliance with national standards for the design, manufacture, import or provision of machinery or equipment or substances for occupational use.

Article 17. The Committee regrets to note that once again the Government has not provided any information on the measures adopted to give effect to this Article, which requires the adoption of legislative or other measures to require enterprises which engage in activities simultaneously at one workplace to collaborate in applying the requirements of the Convention. The Committee hopes that the Government will take the necessary measures to provide the requested information.

[The Government is asked to report in detail in 2002.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Czech Republic, Mexico, Slovakia, Sweden.*

Convention No. 156: Workers with Family Responsibilities, 1981

Argentina (ratification: 1988)

Article 4(b) of the Convention. With regard to its previous comments, the Committee notes with satisfaction the promulgation of Act No. 24.714, of 1996, establishing a new family allowance system. Act No. 18.017 – which had given rise to the Committee's comments – is repealed by section 25 of Act No. 24.714, as are its amendments, as well as Decrees Nos. 770/96, 771/96 and 991/96. The new system introduces important changes, in that the same entitlement to receive allowances for men and women workers is recognized under it, as compared with the previous repealed system, which identified the man as principal beneficiary and which the Committee had indicated was not strictly in conformity with the Convention. The new system is governed by the above Act, by Decree No. 1245/96 and by Social Security Secretariat Decisions Nos. 112/96, 16/97 and 88/97. Under these provisions, where both parents are employed, or are beneficiaries of the integrated system for retirement and pensions or of unemployment insurance, family allowances may be claimed by the person who would benefit from the highest allowance.

The Committee is sending a request regarding other points directly to the Government.

Finland (ratification: 1983)

1. The Committee notes the information contained in the Government's report and the comments of the Central Organization of Finnish Trade Unions (SAK) and the Confederation of Unions for Academic Professionals in Finland (AKAVA). Referring to its previous observation, the Committee recalls that, due to difficult economic circumstances, the Government had postponed the enactment of an amendment to the Children's Daycare Act of 1991 designed to extend the right to municipal day care from children under 3 years to all children under school age (7 years). The Committee notes from the report that, since 1993, the economic situation in Finland has improved and that, accordingly, the amendment in question was enacted and came into force at the

beginning of 1996. The Committee also notes from the report that the Children's Daycare Decree has been amended to shorten the period within which the relevant authorities must arrange for a place in day care, particularly where the need for day care is caused by finding a job, studies or training. Further, according to information supplied by the Government, the home-care allowance scheme was changed on 1 August 1997 by an Act on support for children's home care and private care which established the right of parents to a home-care allowance if the child is under the age of 3 years or belongs to the same family as another child under 3 years being cared for in the same facility.

2. The Committee notes SAK's and AKAVA's comments concerning the extension of the right to day care to all children under school age. The SAK and AKAVA consider that the local authorities have generally fulfilled their obligations well in providing childcare, although they point out that centres with rising populations have had some difficulty in meeting the demand for services. The SAK also observes that structural changes in working life are taking place at a faster rate than childcare services can adjust to; therefore, it is sometimes difficult for working parents to find suitable childcare if they work irregular hours. The Committee notes with interest that, according to SAK and AKAVA, over half of all fathers now exercise their right to paternity leave. These organizations point out, however, that the structure of the Finnish parental allowance scheme, which bases payments on a worker's average wage, has the effect of encouraging the lower paid parent (more often than not the working mother) to stay at home, thereby failing to promote greater gender equality in the workplace. According to the report, the trade union movement has proposed an active campaign to encourage fathers to make greater use of parental leave. The Committee welcomes these positive developments initiated by the Government and the trade unions and hopes that efforts will continue to provide suitable day care services and to meet the needs of working parents. With respect to the parental allowance scheme encouraging mothers over fathers to take leave, the Committee points to the link with the promotion of equal pay remuneration between men and women and refers to its comments under Convention No. 100 on equal remuneration.

The Committee is addressing a request directly to the Government on other points.

France (ratification: 1989)

1. In its previous observation, the Committee noted the comments made by the French Confederation of Christian Workers (CFTC) relating to the parental allowance for bringing up children and the guarantees which should also be accorded to beneficiaries of the allowance in terms of career development and continuity of social protection. It also noted the comments of the French Democratic Confederation of Labour (CFDT) concerning the needs of workers with family responsibilities. The Committee notes that the Government's report contains no reply to the concerns expressed by these trade unions.

2. The Committee notes that according to the 1998 review of collective bargaining, attached to the Government's report, the social partners continued to seek a better reconciliation of working life and family life, as reflected in the granting of leave for childcare. It notes, however, the concerns expressed by the French Democratic Confederation of Labour (CFDT) in its 1994 communication concerning the allowance of measures to take into account the family responsibilities of workers in relation to

other immediate family members requiring their care or support, such as adolescents in difficulty, and elderly or disabled relatives. It hopes that the Government will provide a reply to these matters in its next report.

3. The Committee also recalls the concerns expressed by the CFDT, in relation to *Article 8 of the Convention*, according to which the protection envisaged in sections L.122-45 and L.123-1 of the Labour Code against discrimination based on family situation is far from meeting the real needs of workers with family responsibilities and that there is currently no provision in French legislation prohibiting discrimination in employment against these workers. The Committee therefore requests the Government to supply information on the national policy and legislative measures intended to protect workers with family responsibilities against discrimination, including dismissal, and to promote equality of opportunity and treatment for them.

4. The Committee hopes that the Government will do its utmost in future reports to reply to the concerns expressed and to provide detailed information on the manner in which these fundamental aspects of the Convention are applied in France.

[The Government is asked to report in detail in 2002.]

Japan (ratification: 1995)

1. The Committee recalls its previous observation in which it noted the communication received from the Japanese Trade Union Confederation (JTUC-RENGO) and the Government's reply stating that it would respond to the concerns raised in its next report. Having indicated that it would examine these issues at this session, the Committee regrets to note that the Government has not supplied a report. In its communication JTUC-RENGO had expressed its concern over the lack of protection in Japanese law against termination of employment because of family responsibilities. According to JTUC-RENGO there is a difference between the protection afforded under *Article 8 of the Convention* and Japanese law. In addition, JTUC-RENGO has pointed out that the transfer of workers to remote working places is sometimes resisted by the workers concerned because of their family responsibilities. JTUC-RENGO considers it very important to tackle the problems of workers with family responsibilities when they are ordered to be transferred to other working places.

2. The Committee notes that similar concerns have been raised in a lengthy and quite detailed communication dated 17 October 2000 from the Telecommunications Workers Union (TSUSHINROUSO) which has been forwarded to the Government on 3 November 2000 for any reply it may wish to make. Noting the close relationship between the matters raised by JTUC-RENGO and the recent communications received from TSUSHINROUSO, the Committee has decided to address all the issues raised in both communications at its next session. It hopes the Government will supply information so that its views may be taken into consideration in the Committee's examination of the matter.

3. The Committee also notes the communications dated 13 October 2000 from the Japan National Hospitals Workers' Union concerning in-house childcare facilities at national hospitals, personnel transfers to distant workplaces, and no paid nursing care and childcare leave for wage-based workers. The Committee notes that one of the points concerns the same issue of transfers raised by the other communications set out above.

Noting that the communication was sent to the Government for comment on 7 November 2000, the Committee will also examine these points at its next session.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to report in detail in 2001.]

Norway (ratification: 1982)

The Committee notes the various measures taken by the Government to ensure workers with family responsibilities have equal opportunity and treatment. It notes that the Cash Benefit Scheme for Parents with Small Children Act entered into force on 1 August 1998 and is applicable to all parents with children between the ages of one to three, irrespective of financial means, except when the child attends a day-care centre which receives a grant from the Government. Families with children in part-time day care receive a partial cash benefit. In this regard it notes the amendments to sections 31, 32 and 33A of the 1977 Worker Protection and Working Environment Act (WEA) extending the right of leave of absence for childcare including where parental responsibility is allocated under sections 36 and 37 of the Children's Act as well as for children with special needs. The Committee also notes with interest that the number of fathers making use of their rights to enjoy parental benefits has increased from 1 per cent in 1993 when it was introduced, to the current figure of nearly 80 per cent, and asks the Government to continue to supply information on these and other measures aimed at increasing the role of the father in caring for small children, a recommendation of the Working Party for the Role of the Male referred to in earlier comments.

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In addition, requests regarding certain points are being addressed directly to the following States: *Argentina, Australia, Bolivia, Chile, Croatia, Finland, France, Greece, Guinea, Japan, Netherlands, Niger, San Marino, Slovenia, Sweden, Uruguay.*

Convention No. 157: Maintenance of Social Security Rights, 1982

A request regarding certain points is being addressed directly to the *Philippines*.

Information supplied by *Sweden* in answer to a direct request has been noted by the Committee.

Convention No. 158: Termination of Employment, 1982

General observation

The Committee regrets to note that, despite the fundamental importance to workers of protection against unjustified dismissal, only 29 countries have ratified the Convention. The Committee is aware of the efforts being made by numerous countries to promote employment, in particular by increasing labour market flexibility and implementing other measures such as training. The Committee stresses that the provisions of the Convention are not incompatible with such a labour market approach; rather the Convention furthers sound and humane resource planning at enterprise level.

The Committee draws attention to the need to ensure basic fairness regarding security of employment to workers as a precondition for having a contented workforce which contributes to efficiency in work. The Committee emphasizes that the Convention clearly demonstrates awareness of the need to balance worker protection from unjustified dismissal against the need to ensure labour market flexibility. Consequently, the Convention does no more than require that dismissals be based on a valid reason related to the conduct or capacity of the worker, or to the operational needs of the enterprise; and sets out basic standards of procedural fairness. The Convention leaves considerable discretion to the government, in consultation with workers' and employers' organizations, to determine the specific forms of safeguards which are most appropriate for the economic and social conditions of the country.

The Committee is encouraged to note that more and more governments and tripartite organizations are contacting the Office to request information on this Convention, and appear to appreciate more fully the flexibility built into the Convention, and the valuable contribution it can make to a progressive and efficient employment policy. This is perhaps due to the fact that globalization of markets generally intensifies competition and has the effect of reducing security of employment. The social disruption caused by unemployment has led a growing number of governments to realize the importance of ensuring that dismissals are substantively and procedurally fair.

The Committee recalls its conclusion in its General Survey of 1995 on the instruments concerning protection against unjustified dismissal. In that document, it hoped that Convention No. 158 would achieve a wider level of ratifications, since these standards make up a coherent set of provisions which may be considered as the means of reconciling the achievement in practice of the promotion of the *right to work*, which requires the creation of employment in particular by financially healthy enterprises, and the minimum protection afforded by *labour law*, which implies a universal level of protection for workers, both of which are essential for promoting the interest of society. The Committee also emphasized that the implementation of the Convention will have a positive effect on social peace and productivity at the enterprise level and the reduction of poverty and social exclusion, leading to social stability.

The Committee urges governments, in consultation with the social partners, to consider ratifying the Convention, and to seek information or assistance from the Office as needed.

Turkey (ratification: 1995)

The Committee notes the information contained in the Government's report for the period 1 June 1997 to 31 May 1999, as well as the text of the draft amendment to Labour Act No. 1475 (1971). The Government states that consideration of the draft bill to amend the current legislation was postponed due to general elections, but will be resubmitted. Please forward a copy of the amended legislation once it is adopted.

Article 4 of the Convention. The Committee notes the conclusions, approved by the ILO Governing Body at its 279th Session (November 2000), of the Committee set up to examine the representation alleging non-observance of the Convention made under article 24 of the ILO Constitution by the Confederation of Turkish Trade Unions (TÜRK-İŞ). In its conclusions, the Governing Body noted that Labour Act No. 1475 does not require an employer to give a valid reason, as defined in the Convention, for

termination of permanent employment. Furthermore, sections 14(1) and 16 of the Maritime Labour Act (No. 854) and section 6 of the Journalists Labour Act (No. 5953) also do not require a valid reason for dismissal. The Governing Body considered that *Article 4* appears not to be applied.

The draft amendment submitted by the Government states that an employer would have to provide a clear reason for dismissal. However, there is no requirement in the draft amendment that the reason be valid as defined in the Convention, i.e. that it be related to the capacity or conduct of the individual or related to the operational needs of the enterprise.

The Committee would appreciate receiving further information on the measures taken or envisaged to give full effect to this fundamental provision of the Convention. It draws the Government's attention to the grounds contained in *Article 5* that shall not constitute a valid reason for termination of employment, and urges the Government to consider including a similar list of prohibited grounds in the draft amendment.

The Committee notes that the draft amendment clarifies that the employer would have the burden of proof in an appeal, in accordance with *Article 9*. It draws the Government's attention to other requirements under the Convention which flow from *Article 4*, in particular *Article 10* concerning remedies to be awarded in case of unjustified dismissal. It requests further information on how these obligations under the Convention are applied in law and practice.

Article 6. The Committee notes that section 17(1)(a) of Labour Act No. 1475 provides that a worker may be dismissed without notice "if the worker has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness and as a result is absent for three successive working days or for more than five working days in any month". The Committee considers that the broad wording of this section, involving as it does moral judgements, is highly susceptible to abuse of discretion by an employer. It requests further information on how section 17(1)(a) is applied in practice, including in particular what safeguards exist to prevent abuse of discretion.

Article 7. Further to its previous comments TÜRK-İŞ has submitted an additional observation under article 23 of the Constitution. It again draws attention to the fact that the legislation in force does not ensure workers an opportunity to defend themselves before termination of employment. The Committee notes in particular that no cases of appeal against unjustified dismissal to the court have been cited in the Government's report, and that the draft amendment does not address this issue. The Committee again asks the Government to provide information on what measures have been taken or are envisaged to give effect to this Article of the Convention.

Article 11. TÜRK-İŞ states in its observations that this Article is not applied, as the exception of "serious misconduct" is defined too broadly in the national legislation. Section 17-II of Labour Act No. 1475 defines professional misconduct and improper behaviour to include, inter alia, "absence from work for two consecutive days or twice in one month on the working day following a rest day or on three working days in any month". The Committee notes that without the right to defend oneself before dismissal there is substantial room for abuse under this provision, reaffirming the need to apply *Article 7* fully.

Article 12. TÜRK-İŞ draws attention to the fact that section 14 of Labour Act No. 1475 requires a minimum of one year of service with the same employer and points out that section 20 of the Marine Labour Act and section 6 of the Journalists Labour Act contain almost the same length-of-service requirement. The Committee recalls that under *Article 12* of the Convention a worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to a severance allowance, unemployment benefit or assistance or a combination of both irrespective of the length of service, though the level of the benefit may depend on the length of service. The Committee notes that a social security reform package, which includes unemployment insurance, was approved by Parliament in August 1999. It requests further information on the scope of coverage of the unemployment insurance scheme. It hopes that the above point will be taken into account in the scheme.

Articles 13 and 14. In reply to previous comments, the Government states that in cases involving ten or more workers, section 24 of Labour Act No. 1475 governs the procedure for redundancies. Section 24 provides the right to reinstatement on an individual basis during the six-month period following dismissal on grounds of redundancy. The Government adds that solutions other than dismissal are used to avoid large-scale dismissals. The Committee notes this information. It also notes that there is no requirement in section 24 of Labour Act No. 1475 to provide concerned workers' representatives in good time with relevant information, as required by *Article 13, paragraph 1(a)*. Nor is an employer required to give the workers' representatives an opportunity for consultation on measures to be taken to avert or minimize the terminations or mitigate their effects, as required under *Article 13, paragraph 1(b)*. Furthermore, there is no requirement that an employer give to the competent authority a written statement of the reasons for redundancy, number and category of workers affected, and the period over which the terminations are to be carried out, as required under *Article 14, paragraph 1*. The Committee requests information on the measures taken or envisaged to give full effect to *Articles 13 and 14* of the Convention.

[The Government is asked to report in detail in 2001.]

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In addition, requests regarding certain points are being addressed directly to the following States: *Bosnia and Herzegovina, Cameroon, Democratic Republic of the Congo, Ethiopia, Gabon, Malawi, Republic of Moldova, Morocco, Namibia, Niger, Portugal, Slovenia, Sweden, Uganda, Ukraine, Yemen.*

Convention No. 159: Vocational Rehabilitation and Employment (Disabled Persons), 1983

General observation

The Committee notes the substantial progress made in Latin America and Eastern Europe in enabling persons with disabilities to participate more fully in the open labour market, particularly in light of the limited resources available. The Latin American Group for Professional Rehabilitation (GLARP) has facilitated the success of numerous countries in developing innovative programmes for rehabilitation and integration into the labour market, through pooling of information and some resources. European Union

assistance and sharing of information has also contributed substantially to improvements in several Eastern European countries. The Committee notes with interest these intergovernmental cooperative efforts, and encourages other member States to explore ways to share ideas and resources. Rehabilitation and employment of persons with disabilities is an important issue that poses challenges for all member States which have much to learn from each other's experiences.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Burkina Faso, Chile, Costa Rica, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Finland, Guatemala, Ireland, Japan, Kyrgyzstan, Lithuania, Malawi, Mali, Paraguay, Peru, Russian Federation, Sao Tome and Principe, Slovakia, Slovenia, Spain, Sweden, Tajikistan, Tunisia, Uganda, Uruguay, Yemen.*

Information supplied by *Brazil, China, France, Iceland* and *Pakistan* in answer to a direct request has been noted by the Committee.

Convention No. 160: Labour Statistics, 1985

Requests regarding certain points are being addressed directly to the following States: *Australia, Austria, Belarus, Bolivia, Brazil, Canada, China (Hong Kong Special Administrative Region), Colombia, Cyprus, Czech Republic, El Salvador, Finland, Greece, Guatemala, India, Republic of Korea, Kyrgyzstan, Latvia, Mexico, Netherlands, Norway, Poland, Portugal, Russian Federation, San Marino, Slovakia, Spain, Swaziland, Sweden, Switzerland, Tajikistan, Ukraine, United States.*

Convention No. 161: Occupational Health Services, 1985

Sweden (ratification: 1986)

Further to its previous observation, the Committee notes with interest that progress has been made in deciding whether to introduce legislative amendments on the subject of the provision of occupational health services. It notes that in May 1999, the Government introduced Government Bill Prop. 1998/99:120, which proposes a new provision on occupational health services in Chapter 3 of the Working Environment Act (1977:1160) and amendments to section 9 of the Medical Care (Compensation) Act (1993:1651) and to section 9 of the Physiotherapy (Compensation) Act (1993:1652). The Government indicates that the purpose of these amendments is to elucidate the duty of the employer to provide occupational health services. Furthermore, they are aimed at refining the tasks of occupational health services and at clarifying the cooperation between occupational health services and the publicly financed medical care. Under the proposed new provision of the Work Environment Act, an employer shall be responsible for the occupational health services demanded by the prevailing working conditions. Moreover, occupational health services are taken to mean an independent expert resource in the fields of the working environment and rehabilitation. Occupational health services shall work specifically to prevent and eliminate health hazards in workplaces and shall have the competence to identify and describe connections between the working environment,

organization, productivity and health. The Government had indicated that the amendments would take effect on 1 January 2000.

The Committee also notes that when the Government's last report was received, the said amendments had not yet been discussed by the *Riksdag*, and that it had stated its difficulty in answering the Committee's previous observation.

The Committee hopes the amendments have since been adopted and that the Government would be in a position to answer its previous comments, which read as follows:

Article 2 of the Convention. Referring to its previous comments, the Committee notes the amendments to the national legislation and changes made in the funding system for occupational health care aimed at encouraging preventive activities under work environment policy. As to the Government's control of occupational health care, the National Audit Bureau concluded that the steering effects of the state grant were weak, for example, in increasing the affiliation of small undertakings, and the Government consequently abolished the general grant for occupational health services as from January 1993. In the meantime, a special investigator was appointed to study the organization and funding of occupational health services, and recommended the abolition of public control on occupational health services. This recommendation was based on the support expressed by the labour market parties of collective agreements for a flexible and efficient adjustment of resources for work relating to the occupational environment and rehabilitation. The special investigator proposed that provisions for occupational health services be added to the Work Environment Act. Most of the authorities and organizations upon examination of the investigator's report took the view that the question of occupational health services should be settled through collective bargaining. Agreements concerning occupational health care have been concluded in certain negotiating sectors. The Government intends to wait for the results of negotiations before deciding whether or not to introduce legislative amendments on the subject. In the Spring of 1993 a pilot study was undertaken by the National Board of Occupational Safety and Health in preparation of an ordinance relating to occupational health services.

The Committee also notes that the LO points out in its comments that since the cancellation in July 1992 of the Work Environment Agreement between the LO and the SAF that had governed the conditions applying to occupational health services in the private employment sector, such services have not been regulated by any collective agreements and that negotiations concerning a new agreement have been going on for more than two years.

The Committee further notes the comments by the SAF indicating that a significant number of agreements at the national federation level have been concluded and discussions are still in progress with several other federations. The main issue is the benefit that companies and employees derive from occupational health services. In conclusion, the SAF considers that, given the rules contained in the national legislation in the great majority of cases the employer cannot meet its responsibilities for the work environment and rehabilitation without assistance from occupational health services, and that no further legislation is needed for the implementation of the Convention.

The Committee hopes that the efforts undertaken by the Government in order to review the national policy on occupational health services will lead to a solution in the near future, in the light of national conditions and practice and in consultation with the most representative organizations of employers and workers. It requests the Government to indicate progress achieved in this respect.

Article 3, paragraph 1. In its previous comments, the Committee requested the Government to provide information on the measures taken or contemplated to promote occupational health services for all workers and to indicate the progress made in this regard.

The Government indicates that a new agreement on occupational health services, effective as of 1 July 1992, had been concluded by the National Agency for Government Employers (SAV) and the union organizations for the national government sector; that in a special agreement for the local government sector, concluded in May 1993, the parties referred to occupational health services as a possible resource within the work environment and rehabilitation sphere; and that a number of agreements have been concluded in the private sector. According to the Government, the special provision concerning the Occupational Health Services Delegation in the Standing Instructions of the National Board of Occupational Safety and Health was contained by more generally worded rules to the effect that the Board and the Labour Inspectorate are to observe and encourage the development of occupational health services. The Committee asks the Government to provide copy of the said text. The Committee also notes that a study undertaken jointly by the OHS sectoral organization and the labour market parties referred to by the LO in its comments pointed to the trend of a significant diminution in the staff of occupational health services and in the number of units.

The SAF indicates that the reasons for this reduction of occupational health services were the previous glut of these services, the decline in the number of employees in the country, the growth of corporate expenditure on these services and the threat posed to the status of medical care by the reforms introduced in primary care. In the opinion of the SAF, too much attention has been focused on the coverage rate of occupational health services solely in terms of the number of persons covered. The evaluation of the actual utilization of occupational health services by companies showed that, even among companies affiliated to these services, barely half regarded them as a major corporate resource; for this reason, the SAF thinks it important to distinguish between formal coverage and the value of occupational health services inputs.

The Committee hopes that the Government will continue to make efforts to develop progressively occupational health services for all workers. The Government is requested to provide information on the measures taken or envisaged in this respect.

The Committee hopes that the Government will take the necessary action in the very near future.

The Committee is addressing a request directly to the Government on other points.

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In addition, requests regarding certain points are being addressed directly to the following States: *Czech Republic, Germany, Sweden.*

Convention No. 162: Asbestos, 1986

Chile (ratification: 1994)

1. The Committee notes the comments made by the World Federation of Trade Unions (WFTU) and the documentation sent by the National Trade Union Confederation of Chilean Construction, Wood, Construction Materials and Allied Workers showing the measures taken to alert workers to the risks of occupational exposure to asbestos. These comments were sent to the Government on 26 October 2000; the Government has not yet replied to them.

2. The WFTU's comments concern the use of asbestos by a number of enterprises and its harmful effects both on the workers exposed to it and on the population in the vicinity. The WFTU alleges in particular that although the dangers of using asbestos

have been known for a very long time, the requisite preventive measures have not been taken. Because there are no statistical data, it is not known how many workers in the 26 enterprises or so that use asbestos have contracted diseases or died due to exposure to asbestos. According to the WFTU, however, at least 83 people have died of diseases caused by using asbestos in the enterprise Pizzareño, S.A. at Villa Pizzareño de Maipú, amongst others.

According to the WFTU, the responsibility lies with the enterprises which have failed to take the requisite preventive measures, especially preventive medical examinations, and to use new technologies or ethical standards (of conduct). In particular, the WFTU cites Pizzareño, S.A., which manufactures products using asbestos. It also considers that the public authorities, successive governments and sickness funds share in the responsibility because they have neglected to inform workers of the dangers inherent in asbestos. The WFTU adds that a number of asbestos workers have brought legal proceedings on grounds of inadequate protection against the risks inherent in their work.

The Committee notes that the WFTU refers to the establishment of an anti-asbestos coalition in Chile whose members include, in addition to the Chilean trade unions, the CUT Department of Occupational Safety and Health, the Institute of Political Ecology, the League of Conscientious Consumers, the Consumers and Users Coordination Group and the College of Physicians. This coalition has launched a campaign whose objectives include promulgating legislation to ban the use of asbestos and materials containing asbestos; the framing of occupational health standards which respect the working conditions that apply to the handling of asbestos and the maximum allowable concentration of airborne asbestos fibres, as well as other directives to protect the health of workers exposed to asbestos; regulations to govern the importation and marketing of asbestos; mandatory labelling of products containing asbestos; the preparation of an informative and educational digest on asbestos and its inherent risks, including health hazards; the establishment of a register of asbestos substitute products and a "grey list" of products containing asbestos which must be designated as dangerous for the health.

Lastly, the WFTU observes that, although Chile has legislation covering activities which involve exposure to asbestos, its provisions are not complied with.

The Committee hopes that the Government will send comments on the WFTU's observations and supply full information on how the Convention is applied in law and in practice.

3. The Committee is addressing a request directly to the Government concerning certain matters.

[The Government is asked to report in detail in 2001.]

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Belgium, Cameroon, Chile, Uganda.*

Convention No. 163: Seafarers' Welfare, 1987

A request regarding certain points is being addressed directly to the *Czech Republic.*

**Convention No. 164: Health Protection and Medical Care
(Seafarers), 1987**

Requests regarding certain points are being addressed directly to the following States: *Czech Republic, Finland, Sweden.*

Convention No. 165: Social Security (Seafarers) (Revised), 1987

A request regarding certain points is being addressed directly to *Hungary.*

Convention No. 166: Repatriation of Seafarers (Revised), 1987

A request regarding certain points is being addressed directly to *Spain.*

Convention No. 167: Safety and Health in Construction, 1988

A request regarding certain points is being addressed directly to *Germany.*

**Convention No. 168: Employment Promotion and Protection
against Unemployment, 1988**

Information supplied by *Sweden* in answer to a direct request has been noted by the Committee.

Convention No. 169: Indigenous and Tribal Peoples, 1989

Colombia (ratification: 1996)

1. The Committee notes the information contained in the Government's report. With reference to the situation of Emberá Katio community in the Alto Sinú region faced with the construction of a hydroelectric dam (the Urrá project), the Committee notes that several questions regarding this situation, particularly in respect of the alleged failure to consult with the populations concerned and the irremediable damage caused to their environment, are being examined in the context of two representations made under article 24 of the Constitution, which were deemed receivable by the Governing Body. Noting that these representations are expected to be examined by the Governing Body in 2001, in accordance with established practice, the Committee will not examine these matters at the present session. It therefore requests the Government to send additional information on matters relevant to the representations when sending its report in 2002.

2. As regards the question of the environmental impact studies which should involve the indigenous communities concerned before any environmental licence is granted, in accordance with section 7 of Decree No. 1337, the Committee notes the indications in the report on resolution No. 0564 of 26 June 1998 by the Ministry for the Environment. According to the Government, this resolution resulted in the refusal of the request for an environmental licence made by the El Dorado, S.A. Mining Company regarding the appropriation and exploitation of certain gold deposits, activities to be

undertaken in a region occupied by various indigenous communities. The Government states that the Ministry for the Environment took account of the participation of the indigenous communities concerned when making its decision. The Committee requests the Government to supply a copy of the text of the above resolution which, although mentioned by the Government, has not been received by the Office.

3. *Article 3.* In its earlier comments, the Committee had noted reports that had been received of human rights violations, including massacres in indigenous communities in Sierra Nevada de Santa Marta, and that the Permanent Commission on Indigenous Rights was conducting investigations into these grave allegations, in cooperation with the Office of the People's Advocate. The Government indicates that the Permanent Commission on Indigenous Rights does not in fact have jurisdiction to investigate cases of alleged violation of human rights in indigenous populations or among members of indigenous communities. Noting, however, that the Government's report does not reply to its earlier request, the Committee again asks the Government to indicate the status of these investigations and to list the institutions conducting the investigations, for example the National Office of the Public Prosecutor or the Office of the Attorney-General and the Office of the People's Advocate.

The Committee is addressing a request regarding other matters concerning the application of the Convention directly to the Government.

[The Government is asked to report in detail in 2002.]

Costa Rica (ratification: 1993)

1. The Committee notes the detailed report submitted by the Government.

2. *Articles 13 and 14 of the Convention.* In view of the Government's statement in its previous report that there are large areas of indigenous lands in the possession of non-indigenous persons and that it does not have sufficient resources to compensate these persons upon their removal from those lands, the Committee requests the Government to indicate the progress made in returning the lands to the indigenous peoples concerned. The Committee also requests information on the extent of the indigenous territories still in non-indigenous possession and on the procedures that currently exist within the national legal system so that indigenous peoples can claim land which they have lost, or of which the ownership has not yet been determined. The Committee again requests the Government to supply information on the action brought against the State for alleged violations of indigenous rights as well as information on whether there are any lands occupied by indigenous peoples which have not yet been declared as indigenous reservations.

3. *Article 16.* The Government's report states that the Electricity Institute of Costa Rica (ICE) is inquiring into the possibility of displacing indigenous populations in order to construct a hydroelectric dam. The Committee recalls that *Article 16* of the Convention provides for various mechanisms to ensure the security of indigenous peoples within their territories and provides that where the relocation of indigenous peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only through following appropriate procedures, established by national laws and regulations, including public hearings where

appropriate, which provide the opportunity for effective representation of the peoples concerned. The Committee asks the Government to supply information on the proposed project and the peoples involved, including their numbers, the size of their territories, and how much of these lands ICI is considering appropriating. The Committee also requests information on what procedures exist for consultations with the peoples concerned and for providing for their effective representation in any relocation processes that are being considered.

4. The Committee is addressing a request directly to the Government on other points.

Denmark (ratification: 1995)

The Committee notes with interest the Government's first report on the application of the Convention. It notes in particular that agreements are in effect in Denmark which allow for a very large degree of autonomy of the indigenous people of Greenland within the Kingdom of Denmark, and that the Home Rule Government of Greenland exercises a considerable degree of legislative and regulatory authority over the situation in that territory.

The Committee is asking for additional information on a number of points in a request addressed directly to the Government.

Paraguay (ratification: 1993)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

1. The Committee notes that the report covering the period from 1 June to 1 September 1998 contains information of a general nature but does not respond in full to the matters raised previously in various requests addressed directly to the Government. Shortly before the beginning of its session, the Committee received a new report with numerous annexes covering the period 1 June 1994 to 31 May 1998, which it will examine carefully next year, together with the Government's response to the comments made at its present session and any additional comments which are made. The Committee wishes to draw the Government's attention to the following points:

2. *Articles 9, paragraph 2, and 11, of the Convention.* The Committee notes the information provided by the World Confederation of Labour (WCL) in October 1997, under Convention No. 29, indicating that the working conditions of indigenous persons in ranches suggest an extensive practice of forced labour for the repayment of debts contracted in ranch shops in the purchase of basic foodstuffs and other products of primary necessity at exaggerated prices. This circumstance, combined with the allegation that wages are not paid or are paid at the end of the contract, would signify that in order to survive the workers would have to become indebted and are obliged to work to repay their debt. The information also refers to the ill-treatment suffered by indigenous workers in ranches. The Committee notes that the Government has not provided its comments on these allegations. The Committee therefore urges the Government to provide information on the comments transmitted by the WCL.

3. *Articles 13 to 19, Land.* The Committee notes that religious missions are delivering definitive title to property to certain indigenous communities and that the Paraguayan Indigenous Institute (INDI) had considered that the claims of the Lengua and Sanapaná indigenous communities to 40,000 hectares in "Quebrachales Puerto Colón" had

been practically settled. The Committee once again requests the Government to provide detailed information on the manner in which the transfer of land from the missions to the indigenous communities is proceeding, and on whether the indigenous communities are required to pay compensation and which indigenous communities have benefited from these measures. Please also provide information in the next report on developments in the situation, including the activities of religious missions in this context, whether other non-governmental bodies have pursued such practices in the country and details of the different forms of land tenure prevailing in areas inhabited by indigenous peoples. Please also include information on the finalization of the agreement to resolve the case of indigenous communities in the area known as "Quebrachales Puerto Colon".

4. *Article 20. Recruitment and conditions of employment.* The Committee has received information on the working conditions of indigenous rural workers in Chaco, according to which their wages are only paid at the end of the year; it is alleged that numerous deductions are made for items including food, which in most cases is said to be over-priced. Moreover, discrimination has been alleged in remuneration, where the minimum wage for indigenous workers may be far lower than the level established by the law and non-indigenous workers earn more for the same type of work. Taking this information into consideration, and even though the Government has not ratified the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Committee requests the Government to provide information on the possibility of establishing adequate labour inspection services in areas where there is a high concentration of indigenous workers in order to monitor the working conditions of indigenous peoples, as envisaged in this Article of the Convention.

5. The Committee is addressing a request directly to the Government on other matters.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Peru (ratification: 1994)

1. The Committee notes that the present comments only concern observations presented by a workers' organization under article 23 of the Constitution, and do not concern the application of the Convention in general. The broader matters covered by the observation and direct request of 1998 remain valid, and the Committee reminds the Government that it should reply to these comments in its next report in accordance with article 22 of the Constitution.

2. The Committee notes the submission from the Central Confederation of Workers of Peru (CUT) of 3 August 2000, alleging the non-observance of the Convention by the Peruvian Government. The Committee also notes the Government's reply to the comments by the CUT, of 9 May 2000.

3. The CUT indicates that the Government of Peru has issued Supreme Decree No. 17-99-AG, of 3 June 1999, which expropriates 111,656 hectares of the ancestral lands belonging to the Country Community of Santo Domingo de Olmos ("the Community"), an indigenous community in the Department and Province of Lambayeque. It points out that there are 18,000 community members with a community council elected by 118 delegates which represent the Community.

4. The CUT states that the Government's initial intention was to expropriate 46,000 hectares of community land, but that opposition from the community members prompted the Committee for the Promotion of Private Investment (COPRI) and the

Ministry of Agriculture to expropriate a total of 111,656 hectares. The CUT asserts that the expropriated lands are to be conceded to foreign investors that intend to carry out a hydroelectric project.

5. The Committee notes the provisions of Supreme Decree No. 17-99-AG, as well as Supreme Resolution No. 86 of 4 August 1931, which recognizes "the indigenous community of Olmos" and provides for their entry in the Official Register of the Section for Indigenous Affairs of the Ministry of Development. It also notes from the information supplied by the CUT that neither the Community nor the individual community members have been compensated for the confiscation of these lands.

6. The Committee notes the Government's reply of 9 May 2000 to the communication from the CUT. The Government indicates that, under Act No. 16101 of April 1966, the execution of irrigation works in the Pampas de Olmos in the Department of Lambayeque was declared to be in the public interest and of public benefit and that, subsequently, Supreme Decree No. 907-74-AG of September 1974 designated the Olmos Irrigation Project as a Special Project. As such, according to the Government, under Act No. 26440, the above Project was included in the process of the Promotion of Private Investment, regulated by Legislative Decree No. 674. The Government states that an area of 111,656 hectares of uncultivated land was subsequently identified as falling within the scope of the Project and that as a result, Supreme Decree No. 17-99-AG was issued in June 1999. The Decree states that "definitive studies for the Special Olmos Irrigation Project have been completed ... which include irrigation projects and hydraulic energy systems designed to transfer waters from the Atlantic to the Pacific, channelling them and using them to generate energy, then distributing them for irrigation purposes in the valleys included under the scheme". Section 1 of the Decree changes the name of the earlier project to the Special Olmos Irrigation and Hydraulic Energy Project. Section 2 of the Decree approves the plans and report setting out the scope of the Project, along with the taking of the 111,656 hectares referred to above. Under its section 5, the Supreme Decree provides that the management of the Special Olmos-Tinajones shall enter the lands concerned in the relevant public register, in favour of the Special Olmos Irrigation and Hydraulic Energy Project, without prejudice to the right of ownership of third parties.

7. The Government states that section 70 of the Political Constitution of Peru sets forth the right of ownership and that, in accordance with this section, "no one shall be deprived of their property, except for reasons declared by law to be in the interest of national security and public benefit, and subject to payment of just compensation, including compensation for possible damages sustained". The Government states that recognition of the community ownership of the land covered by the above Project could give rise to expropriation proceedings. However, it indicates that this procedure was not followed in the Community's case, and that the inclusion of the 111,656 hectares in the Project do not constitute a taking. The Government also states that since section 5 of the Decree safeguards third parties' ownership rights, if indigenous ownership of the lands concerned were established, the Community's rights would not be affected.

8. The Committee requests the Government to supply information on the efforts made to demarcate the ancestral lands of the Community, including the 111,656 hectares mentioned in Supreme Decree No. 17-99-AG, as well as copies of all deeds of ownership concerning the lands mentioned above. It also asks the Government to supply

information on all modification made by the Special Project on Land Ownership (PETT) to the Official Land Register as regards the above lands. Finally, it requests the Government to supply information on any action brought by the Community or any of its members to claim ownership of the 111,656 hectares in question or to register ownership of these lands.

9. *Articles 6 and 7 of the Convention.* The Committee recalls that in giving effect to the provisions of the Convention, the Government must consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly. The peoples concerned shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. The Committee requests the Government to send information on any prior consultations held with the Community before the issuing of the Decree in question. It also requests information on the mechanisms established to allow the Community to participate in the development of plans which affect them, including the Special Olmos Irrigation and Hydraulic Energy Project.

10. *Article 15.* The Committee recalls that the rights of indigenous peoples to the natural resources pertaining to their lands shall be specially safeguarded. The peoples concerned shall participate in the use, management and conservation of such resources, and in the benefits accruing from any activities of exploration or exploitation of such resources. Consequently, it requests the Government to send information on all measures taken or envisaged to ensure the participation of the Community in the use, management and conservation of the resources found on its lands, as well as in benefits brought by the Project and to compensate the Community for damages caused by the activities envisaged in the context of the Special Project.

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In addition, requests regarding certain points are being addressed directly to the following States: *Colombia, Costa Rica, Denmark, Paraguay.*

Convention No. 170: Chemicals, 1990

Norway (ratification: 1993)

The Committee notes the observations made by the Norwegian Federation of Oil Workers' Union (OFS), which recalled its previous comments relating to its complaint to the authorities in Norway about the Jotun paint company marketing and selling a product containing isocyanates, without sufficient labelling and information to protect users. The Committee notes that the OFS is very concerned with the Norwegian Government's lack of implementation of Convention No. 170 into Norwegian regulations – specifically concerning the adequate protection of workers from isocyanates. The union indicates that Norwegian regulations at the moment cover only a small fraction of harmful chemicals. It adds that it is of further concern to it that draft regulations prepared by the Norwegian Government in the early 1990s to cover the known hazards from isocyanates were "shelved" due to economic consequences on the Norwegian industry. The OFS has

complained to the police on this enclosing newspaper articles alleging that the Government has given economic considerations priority over workers' health and life.

The Committee notes the Government's reply in which it maintains the viewpoint that Norway has complied with the requirements set out in Convention No. 170 and refers the Committee to its previous reply. With respect to recent developments in regulations and other publications regarding isocyanates, the Government indicates that the Norwegian Directorate of Labour Inspection put out a publication concerning the production and use of isocyanates in 1996. The Directorate is currently drafting a new regulation regarding chemical agents at work, which will be implementing Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work. This Directive regulates risk assessment, protection and prevention measures, information and training for workers and health surveillance. The Government's report states that the Norwegian regulation will cover all types of chemical agents, including isocyanates.

The Government indicates further that in the autumn of 1998, the Norwegian Directorate of Labour Inspection wrote a letter to 900 manufacturers, stressing the importance of health-hazard labelling, that HES data sheets for their products are in accordance with chemicals regulations, and that the manufacturers provide complete health-hazard information to users. According to the Government, this request led to an increasing awareness among the manufacturers concerning these issues.

The Government's report also indicates that in the summer of 1999, the Labour Directorate ran a campaign in the construction industry with a focus on all conditions pertaining to the use of chemicals in this industry. The campaign revealed that 8.1 per cent of the enterprises did not have satisfactory health-hazard labelling or health-hazard information on isocyanates. The enterprises were given orders to correct the situation, and in accordance with standard procedure, the district offices of the Labour Inspection Authority were made to follow up these injunctions.

The Committee hopes the Government will soon complete the drafting of new regulations regarding chemicals at work, covering all types of chemical agents, including isocyanates, and implementing Council Directive 98/24/EC of April 1998. It trusts the Government will take full account of the requirements of *Article 3 of the Convention* which calls for the consultation of the most representative organizations of employers and workers concerned when measures are taken to give effect to the provisions of the Convention. (The Committee also notes with interest that section 11 of said Directive calls for consultations and participation of workers and/or their representatives on matters covered by the Directive, including its annexes.) The Committee would be grateful if the Government would continue to provide full particulars in this regard and that it will communicate a copy of the new regulations when adopted.

The Committee notes that the Government's report does not contain a reply to its previous comments relating to the complaint of the OFS against the company Jotun AS for violation of labelling regulations and of the regulations concerning HES data sheets involving the product "Hard Comp B". It recalls that the Government had indicated that once the police investigation was completed, it would release the document containing both statements made by the Petroleum Directorate and the Directorate of Labour Inspection in this regard. It trusts the Government will communicate information on the

measures taken to give access to the OFS to inspect the said statements when the police investigation is concluded. The Committee trusts the Government will also take the necessary measures in the meantime to ensure that the Jotun paint company as satisfactorily applies the provisions of the regulations concerning the health, environmental and safety (HES) regulations relating to the essential information that should be indicated in the labels of hazardous chemicals, as provided for in *Articles 7 and 10* of the Convention.

**Appendix I. Table of reports received on ratified
Conventions as of 8 December 2000**
(article 22 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under article 22 of the Constitution:

- (a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;
- (b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

Reports received under article 22 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parenthesis.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

Report of the Committee of Experts

Afghanistan	12 reports requested
* No reports received: Conventions Nos. 14, 41, 45, 95, 100, 105, 106, 111, 137, 140, 141, 142	
Albania	10 reports requested
* No reports received: Conventions Nos. 6, 11, 16, 29, 52, 77, 78, 87, 100, (138)	
Algeria	24 reports requested
* 13 reports received: Conventions Nos. 6, 11, 14, 29, 56, 63, 71, 87, 95, 100, 101, 122, 138	
* 11 reports not received: Conventions Nos. 13, 17, 24, 77, 78, 94, 96, 97, 127, 142, 150	
Angola	8 reports requested
* 6 reports received: Conventions Nos. 14, 26, 29, 81, 100, 107	
* 2 reports not received: Conventions Nos. 6, 106	
Antigua and Barbuda	13 reports requested
* 5 reports received: Conventions Nos. 29, 81, 87, 111, 138	
* 8 reports not received: Conventions Nos. 11, 12, 14, 94, 98, 101, 105, 108	
Argentina	23 reports requested
* 20 reports received: Conventions Nos. 9, 14, 22, 23, 29, 35, 52, 68, 77, 78, 87, 90, 95, 96, 100, 107, 115, 124, 129, 138	
* 3 reports not received: Conventions Nos. 71, 79, 88	
Armenia	6 reports requested
* No reports received: Conventions Nos. (100), (111), (122), (135), (151), (174)	
Australia	5 reports requested
* All reports received: Conventions Nos. 22, 29, 87, 100, 122	
Austria	12 reports requested
* All reports received: Conventions Nos. 6, 24, 25, 29, 87, 94, 95, 100, 101, 122, 124, 173	
Azerbaijan	25 reports requested
* All reports received: Conventions Nos. 11, 14, 23, 29, 52, 77, 78, 79, 87, 90, 92, 95, 100, 106, 115, 122, 124, 133, 138, 140, 142, 144, 148, 149, 151	
Bahamas	8 reports requested
* All reports received: Conventions Nos. 14, 22, 26, 29, 42, 94, 95, 97	
Bahrain	3 reports requested
* 2 reports received: Conventions Nos. 14, 29	
* 1 report not received: Convention No. (105)	
Bangladesh	9 reports requested
* 8 reports received: Conventions Nos. 11, 14, 22, 29, 87, 90, (100), 106	
* 1 report not received: Convention No. 107	
Barbados	17 reports requested
* 16 reports received: Conventions Nos. 7, 11, 19, 22, 42, 63, 87, 90, 94, 95, 97, 100, 101, 111, 115, 122	
* 1 report not received: Convention No. 29	
Belarus	15 reports requested
* All reports received: Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 90, 95, 100, 106, 115, 122, 124, 138	
Belgium	24 reports requested
* All reports received: Conventions Nos. 6, 14, 22, 23, 26, 29, 55, 56, 77, 87, 94, 95, 97, 100, 101, 107, 114, 115, 122, 124, 129, 138, 139, 140	
Belize	18 reports requested
* 6 reports received: Conventions Nos. 11, 12, 42, 81, 89, 98	
* 12 reports not received: Conventions Nos. 5, (14), 22, 29, 87, 88, 94, 95, 97, 101, 105, 115	
Benin	12 reports requested
* All reports received: Conventions Nos. 6, 14, 18, 29, 85, 87, 95, 98, 100, 105, 143, (161)	
Bolivia	22 reports requested
* 15 reports received: Conventions Nos. 14, 77, 78, 87, 88, 90, 100, 103, 106, 129, 131, (138), (156), (159), 162	
* 7 reports not received: Conventions Nos. 95, 102, 117, 122, 124, 130, 160	
Bosnia and Herzegovina	58 reports requested
* No reports received: Conventions Nos. 8, 9, 11, 12, 13, 14, 16, 19, 22, 23, 24, 25, 27, 29, 32, 45, 53, 56, 69, 73, 74, 81, 87, 88, 89, 90, 91, 92, 97, 98, 100, 102, 103, 106, 111, 113, 114, 119, 121, 122, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, 148, 155, 156, 158, 159, 161, 162	

Observations concerning ratified Conventions

Botswana	13 reports requested
* No reports received: Conventions Nos. 14, (29), (87), (95), (98), (100), (105), (111), (138), (144), (151), (173), (176)	
Brazil	20 reports requested
* All reports received: Conventions Nos. 5, 6, 14, 22, 29, 94, 95, 97, 100, 106, 107, 115, 117, 122, 124, (132), 134, 140, (146), 170	
Bulgaria	24 reports requested
* 23 reports received: Conventions Nos. 3, 6, 14, 22, 23, 24, 25, 26, 29, 52, 55, 71, 77, 78, 79, 87, 94, 95, 100, 106, 124, 138, (144)	
* 1 report not received: Convention No. 56	
Burkina Faso	24 reports requested
* 21 reports received: Conventions Nos. 5, 6, 11, 14, 17, 18, 29, 41, 81, 87, 95, 97, 98, 100, (105), 111, 129, 132, 143, 150, 159	
* 3 reports not received: Conventions Nos. (141), (161), (170)	
Burundi	18 reports requested
* 17 reports received: Conventions Nos. 1, 11, 12, 14, 17, 26, 27, 29, 42, 52, 62, 87, 89, 90, 100, 101, (135)	
* 1 report not received: Convention No. 94	
Cambodia	3 reports requested
* All reports received: Conventions Nos. 6, 29, 122	
Cameroon	29 reports requested
* No reports received: Conventions Nos. 5, 9, 11, 14, 16, 29, 45, 77, 78, 81, 87, 89, 90, 94, 95, 97, 98, 100, 106, 108, 111, 122, 123, 132, 135, 143, 146, 158, 162	
Canada	5 reports requested
* All reports received: Conventions Nos. 14, 22, 87, 100, 122	
Cape Verde	7 reports requested
* 5 reports received: Conventions Nos. 17, 29, 81, 98, 105	
* 2 reports not received: Conventions Nos. 100, 111	
Central African Republic	20 reports requested
* No reports received: Conventions Nos. 6, 11, 14, 17, 18, 19, 29, 41, 52, 62, 81, 87, 94, 95, 98, 100, 101, 105, 111, 118	
Chad	13 reports requested
* 8 reports received: Conventions Nos. 6, 29, 52, 81, 87, 100, 111, (144)	
* 5 reports not received: Conventions Nos. 14, 41, 95, (135), (151)	
Chile	11 reports requested
* 8 reports received: Conventions Nos. 6, 14, 22, 24, 25, 26, 100, 115	
* 3 reports not received: Conventions Nos. 29, 122, 127	
China	5 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 100, 122	
Hong Kong Special Administrative Region	11 reports requested
* All reports received: Conventions Nos. 5, (14), (22), (23), 29, 87, (97), (101), (115), 122, (124)	
Colombia	16 reports requested
* All reports received: Conventions Nos. 6, 14, 22, 23, 24, 25, 29, 52, 87, 95, 100, 101, 100, 129, 160, 169	
Comoros	26 reports requested
* 18 reports received: Conventions Nos. 1, 6, 14, 17, 26, 29, 42, 52, 77, 78, 81, 95, 98, 99, 100, 101, 105, 122	
* 8 reports not received: Conventions Nos. 5, 10, 11, 12, 33, 87, 89, 106	
Congo	5 reports requested
* No reports received: Conventions Nos. 6, 14, 29, 87, 95	
Costa Rica	17 reports requested
* 15 reports received: Conventions Nos. 14, 29, 87, 90, 95, 100, 101, 106, 122, 127, 129, 138, 141, 148, 169	
* 2 reports not received: Conventions Nos. 94, 114	
Côte d'Ivoire	11 reports requested
* 2 reports received: Conventions Nos. 100, 105	
* 9 reports not received: Conventions Nos. 6, 14, 18, 29, 52, 87, 95, 129, 133	

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Croatia	18 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 24, 25, 29, 56, 87, 90, 100, 102, 106, 113, 122, 129, 132, 138, 147	
Cuba	20 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 29, 52, 77, 78, 79, 87, 90, 94, 95, 97, 100, 101, 106, 107, 122, 138, 140	
Cyprus	27 reports requested
* 24 reports received: Conventions Nos. 23, 29, 87, 90, 94, 95, 97, 100, 105, 106, 114, 121, 124, 135, (138), 143, 144, 150, 154, 158, 159, 160, 162, (172)	
* 3 reports not received: Conventions Nos. 122, 147, (175)	
Czech Republic	19 reports requested
* 4 reports received: Conventions Nos. 77, 78, 95, 155	
* 15 reports not received: Conventions Nos. 14, 29, 87, 89, 90, 100, 108, 115, 122, 124, 130, 132, 140, 148, 161	
Democratic Republic of the Congo	23 reports requested
* No reports received: Conventions Nos. 11, 12, 14, 19, 26, 27, 29, 62, 81, 84, 88, 89, 94, 95, 98, 100, 117, 118, 119, 120, 121, 150, 158	
Denmark	17 reports requested
* 14 reports received: Conventions Nos. 6, 14, 52, 87, 88, 100, 106, 115, 122, 129, 130, 138, 142, 144	
* 3 reports not received: Conventions Nos. 29, 94, 148	
Djibouti	52 reports requested
* 36 reports received: Conventions Nos. 1, 6, 9, 14, 19, 22, 23, 24, 26, 29, 37, 38, 53, 55, 56, 63, 69, 71, 73, 81, 87, 88, 91, 94, 95, 96, 99, 100, 105, 106, 108, 115, 120, 122, 125, 126	
* 16 reports not received: Conventions Nos. 5, 11, 12, 16, 17, 18, 44, 45, 52, 58, 77, 78, 89, 98, 101, 124	
Dominica	15 reports requested
* 13 reports received: Conventions Nos. 11, 12, 14, 22, 29, 81, 87, 94, 95, 97, 98, 105, 111	
* 2 reports not received: Conventions Nos. 100, 138	
Dominican Republic	12 reports requested
* All reports received: Conventions Nos. 29, 52, 77, 79, 87, 90, 95, 100, 106, 107, (167), (172)	
Ecuador	14 reports requested
* 10 reports received: Conventions Nos. 29, 77, 78, 95, 97, 100, 101, 106, 122, (169)	
* 4 reports not received: Conventions Nos. 87, 114, 115, 124	
Egypt	17 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 29, 52, 55, 56, 71, 73, 87, 94, 95, 100, 101, 106, 107, 115	
El Salvador	8 reports requested
* All reports received: Conventions Nos. 29, 77, 78, 81, 107, 122, 129, 138	
Equatorial Guinea	7 reports requested
* No reports received: Conventions Nos. 1, 14, 30, (68), (92), 100, 138	
Estonia	10 reports requested
* All reports received: Conventions Nos. 6, 7, 14, 22, 23, 29, 87, 100, 108, 135	
Ethiopia	10 reports requested
* All reports received: Conventions Nos. 11, 14, 87, 98, 106, 111, 155, 156, 158, 159	
Fiji	11 reports requested
* No reports received: Conventions Nos. 8, 11, 12, 29, 45, 59, 85, 105, 108, (144), (169)	
Finland	14 reports requested
* All reports received: Conventions Nos. 14, 22, 29, 87, 94, 100, 115, 122, 124, 129, 132, 138, 140, 142	
France	40 reports requested
* 30 reports received: Conventions Nos. 14, 17, 22, 23, 27, 42, 55, 56, 71, 77, 78, 87, 90, 94, 97, 100, 101, 106, 111, 114, 115, 122, 124, 126, 127, 129, 138, 144, 148, 149	
* 10 reports not received: Conventions Nos. 24, 29, 52, 63, 82, 95, 105, 137, 140, 147	
Gabon	22 reports requested
* No reports received: Conventions Nos. 6, 11, 12, 14, 29, 41, 52, 81, 87, 95, 98, 100, 101, 105, 106, 111, 124, 135, 144, 150, 154, 158	
Georgia	10 reports requested
* 3 reports received: Conventions Nos. 52, 98, (138)	
* 7 reports not received: Conventions Nos. 29, 100, (105), 111, (117), 122, 142	

Observations concerning ratified Conventions

Germany	15 reports requested
* 14 reports received: Conventions Nos. 22, 23, 29, 56, 87, 100, 114, 115, 122, 129, 132, 138, 140, (176)	
* 1 report not received: Convention No. 97	
Ghana	23 reports requested
* 16 reports received: Conventions Nos. 11, 14, 22, 23, 29, 69, 81, 87, 88, 89, 90, 94, 103, 106, 107, 148	
* 7 reports not received: Conventions Nos. 92, 100, 111, 115, 149, 150, 151	
Greece	18 reports requested
* 17 reports received: Conventions Nos. 14, 23, 29, 52, 55, 71, 77, 78, 87, 90, 95, 100, 106, 122, 124, 138, 144	
* 1 report not received: Convention No. 115	
Grenada	21 reports requested
* 16 reports received: Conventions Nos. 5, 8, 10, 11, 12, 14, 16, 29, 58, 81, 87, 94, 95, 97, 98, 105	
* 5 reports not received: Conventions Nos. 19, 26, 99, (100), 108	
Guatemala	19 reports requested
* 13 reports received: Conventions Nos. 14, 77, 78, 79, 87, 90, 95, 97, 101, 106, 114, 124, 169	
* 6 reports not received: Conventions Nos. 29, 94, 100, 122, 129, 138	
Guinea	32 reports requested
* 26 reports received: Conventions Nos. 5, 11, 14, 29, 45, 81, 87, 90, 98, 100, 105, 111, 114, 115, 117, 122, 132, 136, 142, 143, 144, 148, 150, 151, 156, 159	
* 6 reports not received: Conventions Nos. 89, 94, 95, 121, 140, 149	
Guinea-Bissau	25 reports requested
* 24 reports received: Conventions Nos. 1, 6, 7, 12, 17, 18, 19, 26, 27, 29, 45, 68, 69, 73, 74, 81, 88, 91, 92, 100, 106, 107, 108, 111	
* 1 report not received: Convention No. 14	
Guyana	15 reports requested
* All reports received: Conventions Nos. 29, 42, 87, 94, 95, 97, 100, 115, 129, 131, (138), 140, 149, 166, 172	
Haiti	12 reports requested
* 2 reports received: Conventions Nos. 100, 111	
* 10 reports not received: Conventions Nos. 14, 24, 25, 29, 77, 78, 87, 90, 106, 107	
Honduras	10 reports requested
* All reports received: Conventions Nos. 14, 29, 78, 87, 95, 100, 106, 122, 138, 169	
Hungary	18 reports requested
* 16 reports received: Conventions Nos. 6, 14, 29, 77, 78, 87, 88, 95, 100, 115, 124, 127, 129, (132), (138), 140	
* 2 reports not received: Conventions Nos. 24, 122	
Iceland	4 reports requested
* All reports received: Conventions Nos. 29, 87, 100, 122	
India	10 reports requested
* 6 reports received: Conventions Nos. 11, 14, 90, 100, 107, 115	
* 4 reports not received: Conventions Nos. 22, 29, (122), 147	
Indonesia	5 reports requested
* All reports received: Conventions Nos. 29, 69, (87), 100, 106	
Islamic Republic of Iran	8 reports requested
* 5 reports received: Conventions Nos. 95, 100, 108, 111, 122	
* 3 reports not received: Conventions Nos. 14, 29, 106	
Iraq	33 reports requested
* 30 reports received: Conventions Nos. 14, 16, 19, 22, 23, 27, 29, 42, 81, 88, 89, 94, 95, 100, 106, 107, 115, 122, 132, 137, 138, 140, 142, 144, 147, 148, 149, 150, 152, 153	
* 3 reports not received: Conventions Nos. 11, 77, 78	
Ireland	16 reports requested
* 12 reports received: Conventions Nos. 6, 14, 22, 23, 87, 100, 124, 138, 139, 159, 160, (176)	
* 4 reports not received: Conventions Nos. 29, 122, 132, (172)	
Israel	18 reports requested
* All reports received: Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 90, 94, 95, 97, 100, 101, 106, 111, 122, 138, 150	

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Italy	25 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 29, 55, 71, 77, 78, 79, 87, 90, 94, 95, 97, 100, 106, 114, 115, 122, 124, 129, 132, 138, 142, 143	
Jamaica	13 reports requested
* 1 report received: Convention No. (144)	
* 12 reports not received: Conventions Nos. 8, 11, 29, 87, 94, 97, 98, 100, 111, 122, 149, 150	
Japan	6 reports requested
* All reports received: Conventions Nos. 22, 29, 87, 100, 115, 122	
Jordan	6 reports requested
* All reports received: Conventions Nos. 29, 100, 106, 122, 124, (138)	
Kenya	14 reports requested
* 13 reports received: Conventions Nos. 14, 17, 29, 63, 94, 97, 105, 129, 132, 138, 140, 143, 149	
* 1 report not received: Convention No. 144	
Republic of Korea	3 reports requested
* All reports received: Conventions Nos. 100, (111), 122	
Kuwait	5 reports requested
* All reports received: Conventions Nos. 29, 52, 87, 106, (159)	
Kyrgyzstan	41 reports requested
* No reports received: Conventions Nos. 11, 14, 16, 23, 27, 29, 32, 45, 47, 52, 69, 73, 77, 78, 79, 87, 90, 92, 95, 98, 100, 103, 106, 108, 111, 113, 115, 119, 120, 122, 124, 126, (133), 134, 138, 142, 147, 148, 149, 159, 160	
Lao People's Democratic Republic	3 reports requested
* No reports received: Conventions Nos. 4, 6, 29	
Latvia	20 reports requested
* 13 reports received: Conventions Nos. 6, 14, 19, 24, 67, 100, 105, 106, 115, 122, 129, 132, 148	
* 7 reports not received: Conventions Nos. 7, 8, 9, 16, 108, (147), 149	
Lebanon	12 reports requested
* All reports received: Conventions Nos. 14, 29, 52, 71, 77, 78, 90, 95, 100, 106, 115, 122	
Lesotho	10 reports requested
* 8 reports received: Conventions Nos. 11, 14, 29, 87, 98, (111), (135), (144)	
* 2 reports not received: Conventions Nos. (100), (167)	
Liberia	9 reports requested
* No reports received: Conventions Nos. 22, 23, 29, 55, 87, 108, 114, (133), 147	
Libyan Arab Jamahiriya	22 reports requested
* 18 reports received: Conventions Nos. 1, 29, 52, 53, 81, 88, 95, 100, 102, 103, 105, 111, 118, 121, 122, 128, 130, 138	
* 4 reports not received: Conventions Nos. 14, 89, 96, 98	
Lithuania	11 reports requested
* All reports received: Conventions Nos. 14, 24, 29, 79, 87, 88, 90, 100, 131, (138), 142	
Luxembourg	15 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 29, 55, 56, 77, 78, 79, 87, 90, 100, 108, 132, 138	
Madagascar	21 reports requested
* 20 reports received: Conventions Nos. 6, 11, 12, 14, 29, 41, 87, (88), 95, (98), 100, 111, 122, 124, 127, 129, 132, (144), (159), (173)	
* 1 report not received: Convention No. 118	
Malawi	8 reports requested
* 6 reports received: Conventions Nos. 11, 12, 89, 100, 129, 144	
* 2 reports not received: Conventions Nos. 97, 107	
Malaysia	5 reports requested
* All reports received: Conventions Nos. 29, 95, 98, (100), (138)	
Peninsular Malaysia	5 reports requested
* 4 reports received: Conventions Nos. 12, 17, 19, 45	
* 1 report not received: Convention No. 11	

Observations concerning ratified Conventions

Sabah	3 reports requested
* 2 reports received: Conventions Nos. 94, 97	
* 1 report not received: Convention No. 16	
Sarawak	6 reports requested
* 4 reports received: Conventions Nos. 12, 14, 19, 94	
* 2 reports not received: Conventions Nos. 11, 16	
Mali	15 reports requested
* 12 reports received: Conventions Nos. 5, 6, 11, 14, 17, 29, 41, 52, 87, 95, (141), (151)	
* 3 reports not received: Conventions Nos. 18, 81, 100	
Malta	30 reports requested
* All reports received: Conventions Nos. 1, 2, 8, 11, 12, 14, 16, 19, 22, 29, 42, 77, 78, 87, 88, 95, 96, 100, 106, 108, 111, 117, 124, 129, 132, 135, 138, 141, 149, 159	
Mauritania	28 reports requested
* 14 reports received: Conventions Nos. 5, 11, 17, 18, 19, 22, 23, 52, 58, 89, 90, 96, 101, (105)	
* 14 reports not received: Conventions Nos. 3, 14, 29, 33, 81, 87, 91, 94, 95, 102, 112, 114, 118, 122	
Mauritius	8 reports requested
* All reports received: Conventions Nos. 11, 14, 26, 29, 94, 95, 97, 138	
Mexico	16 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 29, 52, 55, 56, 87, 90, 95, 100, 102, 106, 115, 124, 140	
Republic of Moldova	5 reports requested
* 4 reports received: Conventions Nos. 87, 122, 129, (132)	
* 1 report not received: Convention No. 95	
Mongolia	9 reports requested
* No reports received: Conventions Nos. 59, 87, 100, 103, 122, (135), (144), (155), (159)	
Morocco	13 reports requested
* All reports received: Conventions Nos. 14, 22, 29, 52, 55, 94, 99, 100, 101, 106, 122, 129, 136	
Mozambique	4 reports requested
* 3 reports received: Conventions Nos. 87, 100, 122	
* 1 report not received: Convention No. 14	
Myanmar	12 reports requested
* No reports received: Conventions Nos. 1, 2, 6, 14, 16, 19, 22, 26, 27, 29, 52, 87	
Namibia	1 report requested
* All reports received: Convention No. 87	
Nepal	6 reports requested
* All reports received: Conventions Nos. 14, 98, 100, 131, (138), 144	
Netherlands	25 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 24, 25, 29, 71, 87, 90, 94, 95, 97, 100, 101, 106, 114, 115, 122, 124, 129, 138, 140, (152), 160, (169)	
New Zealand	11 reports requested
* All reports received: Conventions Nos. 11, 14, 22, 23, 29, 52, 97, 100, 101, 105, 122	
Nicaragua	17 reports requested
* All reports received: Conventions Nos. 6, 14, 22, 23, 24, 25, 29, 77, 78, 87, 95, 100, 115, 122, 127, 138, 140	
Niger	23 reports requested
* 18 reports received: Conventions Nos. 11, 18, 41, 81, 87, 98, 105, 111, 117, 119, 131, 135, 138, 142, 148, 154, 156, 158	
* 5 reports not received: Conventions Nos. 6, 14, 29, 95, 100	
Nigeria	12 reports requested
* No reports received: Conventions Nos. 8, 11, 26, 29, 87, 88, 94, 95, 97, 100, 105, 133	
Norway	17 reports requested
* All reports received: Conventions Nos. 14, 22, 29, 56, 71, 87, 90, 94, 95, 97, 100, 115, 122, 129, 132, 138, 143	
Oman	1 report requested
* All reports received: Convention No. (29)	

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Pakistan	10 reports requested
* All reports received: Conventions Nos. 11, 14, 22, 29, 87, 90, 105, 106, 107, 159	
Panama	17 reports requested
* All reports received: Conventions Nos. 22, 23, 29, 52, 55, 56, 71, 77, 78, 87, 94, 95, 100, 107, 114, 122, 124	
Papua New Guinea	3 reports requested
* No reports received: Conventions Nos. 22, 29, 122	
Paraguay	16 reports requested
* 15 reports received: Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 90, 95, 100, 101, 105, 115, 122, 124	
* 1 report not received: Convention No. 169	
Peru	24 reports requested
* 23 reports received: Conventions Nos. 14, 22, 23, 24, 25, 29, 44, 52, 55, 56, 71, 77, 78, 79, 87, 88, 90, 98, 100, 101, 106, 114, 122	
* 1 report not received: Convention No. 102	
Philippines	11 reports requested
* All reports received: Conventions Nos. 23, 77, 87, 90, 94, 95, 100, 122, (136), 149, (176)	
Poland	22 reports requested
* All reports received: Conventions Nos. 8, 14, 22, 23, 24, 25, 29, 77, 78, 79, 87, 90, 95, 100, 101, 108, 115, 122, 124, 129, 138, 140	
Portugal	21 reports requested
* All reports received: Conventions Nos. 6, 14, 22, 23, 29, 77, 78, 87, 95, 97, 100, 106, 107, 115, 122, 124, 129, 131, 132, (138), 143	
Qatar	1 report requested
* All reports received: Convention No. (29)	
Romania	11 reports requested
* All reports received: Conventions Nos. 6, 14, 24, 29, 87, 95, 100, (105), 122, 129, 138	
Russian Federation	25 reports requested
* All reports received: Conventions Nos. 14, 23, 29, 52, 77, 78, 79, (81), 87, 90, 92, 95, 100, (105), 106, 108, 115, 122, 124, 126, 133, 138, (150), (155), (156)	
Rwanda	7 reports requested
* All reports received: Conventions Nos. 11, 14, 87, 94, 100, 132, 138	
Saint Lucia	21 reports requested
* 1 report received: Convention No. 98	
* 20 reports not received: Conventions Nos. 5, 7, 8, 11, 12, 14, 16, 17, 19, 26, 29, 87, 94, 95, 97, 100, 101, 105, 108, 111	
Saint Vincent and the Grenadines	9 reports requested
* All reports received: Conventions Nos. (26), (29), (81), (94), (95), (98), (101), (105), (108)	
San Marino	10 reports requested
* All reports received: Conventions Nos. 29, 87, 100, (103), 105, 111, 138, 140, 143, 154	
Sao Tome and Principe	11 reports requested
* No reports received: Conventions Nos. 17, 18, 81, 87, 88, 98, 100, 106, 111, 144, 159	
Saudi Arabia	5 reports requested
* All reports received: Conventions Nos. 14, 29, 90, 100, 106	
Senegal	14 reports requested
* All reports received: Conventions Nos. 6, 12, 14, 19, 29, 52, 87, 89, 95, 100, 101, 111, 121, 122	
Seychelles	4 reports requested
* All reports received: Conventions Nos. 26, 29, 87, 99	
Sierra Leone	26 reports requested
* No reports received: Conventions Nos. 8, 16, 17, 19, 22, 26, 29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144	
Singapore	3 reports requested
* All reports received: Conventions Nos. 22, 29, 94	

Observations concerning ratified Conventions

Slovakia	28 reports requested
* 11 reports received: Conventions Nos. 11, 12, 17, 29, 42, 100, 140, 160, 161, (173), (176)	
* 17 reports not received: Conventions Nos. 14, 52, 77, 78, 87, 89, 90, 95, 96, 115, 122, 124, 130, 138, 148, 155, 159	
Slovenia	26 reports requested
* 24 reports received: Conventions Nos. 14, 22, 23, 24, 25, 29, 56, 87, 90, 100, 106, 114, 121, 122, 129, 132, 138, 140, 148, 155, 156, 159, 161, 162	
* 2 reports not received: Conventions Nos. 97, 143	
Solomon Islands	11 reports requested
* No reports received: Conventions Nos. 8, 11, 12, 14, 29, 42, 45, 81, 94, 95, 108	
South Africa	3 reports requested
* All reports received: Conventions Nos. 29, 63, 87	
Spain	26 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 24, 25, 29, 55, 77, 78, 79, 87, 90, 94, 95, 97, 100, 101, 106, 114, 115, 122, 124, 129, 132, 138, 140	
Sri Lanka	10 reports requested
* 9 reports received: Conventions Nos. 11, 29, 87, 90, 95, 100, 106, 108, (111)	
* 1 report not received: Convention No. 115	
Sudan	6 reports requested
* All reports received: Conventions Nos. 26, 29, 95, 100, 111, 122	
Suriname	9 reports requested
* All reports received: Conventions Nos. 14, 29, 87, 94, 95, 101, 106, 122, 144	
Swaziland	17 reports requested
* 15 reports received: Conventions Nos. 11, 12, 14, 81, 87, 89, 90, 94, 95, 98, 100, 101, 105, 144, 160	
* 2 reports not received: Conventions Nos. 29, 111	
Sweden	35 reports requested
* All reports received: Conventions Nos. 11, 12, 14, 29, 81, 87, 98, 100, 105, 111, 115, 121, 122, 129, 132, 138, 140, 143, 147, 148, 149, 150, 151, 154, 155, 156, 157, 158, 159, 160, 161, 162, 164, 174, (176)	
Switzerland	8 reports requested
* All reports received: Conventions Nos. 8, 14, 23, 29, 87, 100, 115, 132	
Syrian Arab Republic	24 reports requested
* All reports received: Conventions Nos. 11, 14, 17, 18, 19, 29, 52, 63, 81, 87, 89, 94, 95, 96, 100, 101, 105, 106, 107, 111, 115, 118, 124, 129	
Tajikistan	23 reports requested
* 8 reports received: Conventions Nos. 11, 14, 29, 77, 87, 95, 100, 159	
* 15 reports not received: Conventions Nos. 23, 52, 78, 79, 90, 106, 115, 119, 120, 122, 124, 138, 148, 149, 160	
United Republic of Tanzania	18 reports requested
* 5 reports received: Conventions Nos. 29, 59, 98, 142, 144	
* 13 reports not received: Conventions Nos. 11, 12, 17, 63, 94, 95, 105, 137, (138), 140, 148, 149, (154)	
Tanganyika	2 reports requested
* No reports received: Conventions Nos. 45, 101	
Zanzibar	3 reports requested
* No reports received: Conventions Nos. 58, 85, 97	
Thailand	3 reports requested
* All reports received: Conventions Nos. 14, 29, 122	
The former Yugoslav Republic of Macedonia	39 reports requested
* No reports received: Conventions Nos. 8, 11, 12, 14, 27, 23, 24, 25, 27, 29, 45, 56, 81, 87, 88, 89, 90, 97, 98, 100, 106, 111, 114, 121, 122, 129, 132, 136, 138, 140, 142, 143, 148, 155, 156, 158, 159, 161, 162	
Togo	9 reports requested
* All reports received: Conventions Nos. 6, 14, 29, 87, 95, 98, 100, 138, 143	
Trinidad and Tobago	9 reports requested
* All reports received: Conventions Nos. 29, 85, 87, 97, 98, (100), 105, 111, 144	

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Tunisia	17 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 29, 52, 55, 77, 87, 90, 95, 100, 106, 107, 114, 122, 124, 138	
Turkey	11 reports requested
* All reports received: Conventions Nos. 14, 26, (29), 77, 87, 94, 95, 100, 115, 122, (138)	
Turkmenistan	6 reports requested
* No reports received: Conventions Nos. (29), (87), (98), (100), (105), (111)	
Uganda	11 reports requested
* 8 reports received: Conventions Nos. 29, 95, 105, 122, 124, 144, 154, 159	
* 3 reports not received: Conventions Nos. 94, 143, 162	
Ukraine	18 reports requested
* 15 reports received: Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 90, 95, 100, 106, 115, 122, 124, 138	
* 3 reports not received: Conventions Nos. 23, 92, 133	
United Arab Emirates	3 reports requested
* 2 reports received: Conventions Nos. 29, 100	
* 1 report not received: Convention No. (138)	
United Kingdom	15 reports requested
* 14 reports received: Conventions Nos. 22, 23, 24, 25, 29, 56, 87, 97, 100, 102, 114, 115, 122, 140	
* 1 report not received: Convention No. 124	
United States	1 report requested
* All reports received: Convention No. 55	
Uruguay	37 reports requested
* All reports received: Conventions Nos. 14, 22, 23, 29, 63, 77, 78, 79, 81, 87, 90, 94, 95, 97, 98, 100, 106, 111, 114, 115, 120, 121, 122, 129, 131, 132, 138, 148, 149, 150, 151, 154, 155, 156, 159, 161, 162	
Uzbekistan	11 reports requested
* No reports received: Conventions Nos. (29), (47), (52), (98), (100), (103), (105), (111), (122), (138), (154)	
Venezuela	14 reports requested
* 13 reports received: Conventions Nos. 5, 14, 22, 29, 87, 95, 97, 100, 122, 138, 140, 143, 155	
* 1 report not received: Convention No. 88	
Viet Nam	4 reports requested
* No reports received: Conventions Nos. 6, 14, 100, 124	
Yemen	13 reports requested
* 12 reports received: Conventions Nos. 29, 81, 87, 94, 95, 98, 100, 105, 111, 122, 132, 158	
* 1 report not received: Convention No. 14	
Zambia	12 reports requested
* 10 reports received: Conventions Nos. 29, 87, 95, 97, 100, 103, 124, 131, 138, 150	
* 2 reports not received: Conventions Nos. 122, (173)	
Zimbabwe	11 reports requested
* All reports received: Conventions Nos. 14, (29), (98), 100, (105), 129, (135), (140), (150), (159), (170)	

Grand Total

A total of 2,550 reports were requested, of which 1,798 reports (70.51 per cent) were received.

**Appendix II. Statistical table of reports received on
ratified Conventions as of 8 December 2000**
(article 22 of the Constitution)

Conference Year	Reports requested	Reports received at the date requested	Reports received in time for the session of the Committee of Experts	Reports received in time for the session of the Conference
1932	447	-	406 90.8%	423 94.6%
1933	522	-	435 83.3%	453 86.7%
1934	601	-	508 84.5%	544 90.5%
1935	630	-	584 92.7%	620 98.4%
1936	662	-	577 87.2%	604 91.2%
1937	702	-	580 82.6%	634 90.3%
1938	748	-	616 82.4%	635 84.9%
1939	766	-	588 76.8%	-
1944	583	-	251 43.1%	314 53.9%
1945	725	-	351 48.4%	523 72.2%
1946	731	-	370 50.6%	578 79.1%
1947	763	-	581 76.1%	666 87.3%
1948	799	-	521 65.2%	648 81.1%
1949	806	134 16.6%	666 82.6%	695 86.2%
1950	831	253 30.4%	597 71.8%	666 80.1%
1951	907	288 31.7%	507 55.9%	761 83.9%
1952	981	268 27.3%	743 75.7%	826 84.2%
1953	1026	212 20.6%	840 81.8%	917 89.3%
1954	1175	268 22.8%	1077 91.7%	1119 95.2%
1955	1234	283 22.9%	1063 86.1%	1170 94.8%
1956	1333	332 24.9%	1234 92.5%	1283 96.2%
1957	1418	210 14.7%	1295 91.3%	1349 95.1%
1958	1558	340 21.8%	1484 95.2%	1509 96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.				
1959	995	200 20.4%	864 86.8%	902 90.6%
1960	1100	256 23.2%	838 76.1%	963 87.4%
1961	1262	243 19.3%	1090 86.0%	1142 90.5%
1962	1309	200 15.3%	1059 80.9%	1121 85.6%
1963	1624	280 17.2%	1314 80.9%	1430 88.0%
1964	1495	213 14.2%	1268 84.8%	1356 90.7%
1965	1700	282 16.6%	1444 84.9%	1527 89.8%
1966	1562	245 15.7%	1330 85.1%	1395 89.3%
1967	1883	323 17.2%	1551 82.4%	1643 87.3%
1968	1647	281 17.1%	1409 85.5%	1470 89.1%
1969	1821	249 13.7%	1501 82.4%	1601 87.9%
1970	1894	360 18.9%	1463 77.0%	1549 81.6%
1971	1992	237 11.9%	1504 75.5%	1707 85.6%
1972	2025	297 14.6%	1572 77.6%	1753 86.5%
1973	2048	300 14.6%	1521 74.3%	1691 82.5%
1974	2189	370 16.9%	1854 84.6%	1958 89.4%
1975	2034	301 14.8%	1663 81.7%	1764 86.7%
1976	2200	292 13.2%	1831 83.0%	1914 87.0%

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Conference Year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%		

**II. Observations on the application of Conventions
in non-metropolitan territories**
(article 22 and article 35, paragraphs 6 and 8, of the Constitution)

A. General observations

Denmark

Faeroe Islands

The Committee notes that for many years most of the reports due have not been received. It expresses the hope that in future the Government will not fail to discharge this obligation under the ILO Constitution.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *Netherlands* (Aruba, Netherlands Antilles), *United Kingdom* (Anguilla, Bermuda, Falkland Islands (Malvinas), Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat, St. Helena).

B. Individual observations

Convention No. 3: Maternity Protection, 1919

A request regarding certain points is being addressed directly to *Australia* (Norfolk Island).

Convention No. 5: Minimum Age (Industry), 1919

A request regarding certain points is being addressed directly to *Denmark* (Greenland).

Convention No. 6: Night Work of Young Persons (Industry), 1919

A request regarding certain points is being addressed directly to *Denmark* (Greenland).

Convention No. 9: Placing of Seamen, 1920

A request regarding certain points is being addressed directly to *Denmark* (Faeroe Islands).

Convention No. 12: Workmen's Compensation (Agriculture), 1921

Information supplied by *Australia* (Norfolk Island) in answer to a direct request has been noted by the Committee.

Convention No. 14: Weekly Rest (Industry), 1921

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *Netherlands* (Aruba).

**Convention No. 16: Medical Examination of
Young Persons (Sea), 1921**

A request regarding certain points is being addressed directly to *Denmark* (Faeroe Islands).

Convention No. 17: Workmen's Compensation (Accidents), 1925

United Kingdom

Anguilla

In its earlier comments, the Committee had drawn attention to Ordinance No. 21 of 1955 on compensation for occupational injuries, which does not give full effect to certain provisions of the Convention. Thus, on the one hand, section 2(1)(a) of the Ordinance excludes from its scope manual workers whose earnings exceed a certain limit, contrary to *Article 2(2)(d) of the Convention* which only authorizes this type of exclusion for non-manual workers and, on the other hand, section 8(a), (b) and (c) of the same Ordinance provides that, in the event of death or permanent incapacity, compensation shall be paid to the victim in the form of a lump sum, while *Article 5* of the Convention guarantees compensation for the victim or his dependants in the form of periodical payments. Such compensation may however be wholly or partially paid in a lump sum if the competent authority is satisfied that it will be properly utilized.

In its report, the Government indicates that the draft legislation placing compensation for occupational injuries under the social security scheme has still not been implemented. However, sickness and survivors' benefits are granted to victims of occupational accidents or their dependants under social security legislation without taking the occupational origin of the incident into account.

While noting this information, the Committee recalls that in its 1991 observation it drew the Government's attention to the fact that the right to sickness, disablement and survivors' benefits granted under the social security legislation (Social Security (Benefits) Regulations, 1981) is conditional upon a minimum qualifying period, which is contrary to the Convention. Given these circumstances, the Committee hopes the Government will take all the measures necessary to ensure full application of *Articles 2 and 5* of the Convention, either by establishing an employment industry benefit scheme under the social security scheme in conformity with the Convention, or by amending section 2(1)(a) and section 8(a), (b) and (c) of Ordinance No. 21 of 1955 on

compensation for occupational accidents in the light of the above comments. The Committee trusts that the Government's next report will indicate progress achieved in this connection.

British Virgin Islands

The Committee notes the adoption of the Social Security (Employment Injury Benefits) Regulations of 1994, implementing an occupational accidents compensation scheme under the general social security regime. The Committee notes with satisfaction that the abovementioned legislation allows effect to be given to the provisions of *Articles 5, 7, 9, 10 and 11 of the Convention* which had occasioned its earlier comments.

The Committee is addressing a request regarding certain points directly to the Government.

Isle of Man

Articles 9 and 10 of the Convention. In reply to the Committee's previous comments concerning the cost sharing by the victims of employment accidents in the cost of drugs, medicines and appliances prescribed for outpatients, the Government repeats the argument that the current arrangements for exemption from cost sharing are considered satisfactory in so far as they protect victims of occupational accidents who may have difficulty in meeting the cost of prescription charges. The Committee once again reminds the Government that any provision envisaging the sharing by the victim of an occupational accident in the cost of prescribed drugs, medicines and artificial limbs and surgical appliances is contrary to the provisions of *Articles 9 and 10 of the Convention*. These Articles are intended to prevent workers from having to bear the financial costs resulting from employment injury. In these conditions, the Committee is bound to hope once again that the Government will be able to reconsider this question and take the necessary measures to give full effect to the Convention on these points. In this respect, it also requests the Government to refer to the observation concerning the application of the Convention by the United Kingdom.

* * *

In addition, requests regarding certain points are being addressed directly to *Australia* (Norfolk Island), *United Kingdom* (British Virgin Islands, Jersey, St. Helena).

Convention No. 22: Seamen's Articles of Agreement, 1926

Requests regarding certain points are being addressed directly to the *United Kingdom* (Anguilla, Gibraltar, Jersey).

Convention No. 23: Repatriation of Seamen, 1926

A request regarding certain points is being addressed directly to the *United Kingdom* (Anguilla).

Convention No. 24: Sickness Insurance (Industry), 1927

A request regarding certain points is being addressed directly to the *United Kingdom* (Guernsey).

Convention No. 25: Sickness Insurance (Agriculture), 1927

Requests regarding certain points are being addressed directly to the following States: *Netherlands* (Aruba), *United Kingdom* (Guernsey).

**Convention No. 27: Marking of Weight
(Packages Transported by Vessels), 1929**

Requests regarding certain points are being addressed directly to *France* (French Guiana, Guadeloupe, Martinique, Réunion).

Convention No. 29: Forced Labour, 1930

Requests regarding certain points are being addressed directly to the following States: *Netherlands* (Aruba), *United Kingdom* (Gibraltar).

**Convention No. 42: Workmen's Compensation
(Occupational Diseases) (Revised), 1934**

France

French Guiana

The Committee notes, from the information provided by the Government, that the metropolitan legislation and regulations are applicable in Guiana. It therefore requests the Government to refer to the observation that it is addressing to metropolitan France concerning the application of this Convention.

[The Government is asked to report in detail in 2002.]

Guadeloupe

In its report, the Government indicates that the system for the compensation of occupational diseases which is applicable in Guadeloupe is the same as the system covering metropolitan France. The Committee therefore requests the Government to refer to the observation that it is addressing to metropolitan France concerning the application of this Convention.

[The Government is asked to report in detail in 2002.]

Martinique

In its report, the Government indicates that the legislation concerning compensation for occupational diseases applicable in Martinique is the same as that covering metropolitan France. The Committee therefore requests the Government to

refer to the observation that it is addressing to metropolitan France concerning the application of this Convention.

The Committee also notes, from the information provided by the Government, that the number of diseases reported which are liable to give entitlement to compensation do not correspond to the real situation and that the labour inspection services therefore intend to carry out awareness-raising activities for occupational physicians and general practitioners so that they are less reticent in reporting occupational diseases. The Committee would be grateful if the Government would continue to provide information on this matter, as well as statistics on the number of occupational diseases reported.

[The Government is asked to report in detail in 2002.]

Réunion

The Committee notes that the Government's report has not been received. It furthermore notes that the Government's previous report contained no answers to its previous comments. It trusts that the next report of the Government will supply detailed information on the application of the Convention in practice and on the points raised in its previous comments. In this connection, the Committee refers to the observation it is addressing to metropolitan France in respect of the application of this Convention.

[The Government is asked to report in detail in 2002.]

St. Pierre and Miquelon

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

In reply to the Committee's previous comments, the Government states again that the schedule of occupational diseases in force for the Metropolis and overseas departments does not apply *ipso facto* to the Territorial Community of St. Pierre and Miquelon which has full competence, under section 44 of the Decree of 24 February 1957, to decide on the extensions to the orders making them applicable within its territorial jurisdiction. In these circumstances, the French Government can only use its influence to persuade the community to issue orders extending the schedule in question, permitting compensation for the pathological manifestations referred to in *Article 2 of the Convention*. It adds moreover that the territorial community of 6,000 inhabitants which has apparently not recorded occupational diseases seems to be in no hurry to issue such an extension.

While noting this information, the Committee trusts that the Government will do its utmost to draw the attention of the Territorial Community to the need to take suitable measures to give effect to this Convention which has been applicable to St. Pierre and Miquelon since 1974.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

United Kingdom

Gibraltar

In reply to the Committee's previous comments, the Government indicates that it envisages taking the necessary measures to amend the schedule of occupational diseases annexed to the Employment Injuries Insurance (Occupational Diseases) (Amendment)

Regulations to bring them into conformity with the Convention. It adds that, as soon as the legislation is drafted, a copy will be made available to the Office.

The Committee notes this information. It trusts that the Government will not fail in the very near future to take all the necessary measures required to complete the schedule of occupational diseases taking into account the following points: (1) the schedule of occupational diseases which is in force confines the activities likely to cause anthrax infection to the loading, unloading or transport of animal products or residues or contact with animals infected with anthrax, whereas the Convention is drawn up in more general terms on this point and also includes the *loading and unloading or transport of merchandise* in general; (2) the schedule does not mention poisoning caused by certain halogen derivatives of hydrocarbons of the aliphatic series, whereas the Convention covers all these substances, and (3) the schedule only covers certain disorders caused by ionizing radiation, whereas the Convention covers *all* pathological manifestations due to X-rays, radium and other radioactive substances.

* * *

In addition, a request regarding certain points is being addressed directly to *Australia* (Norfolk Island).

Convention No. 56: Sickness Insurance (Sea), 1936

A request regarding certain points is being addressed directly to the *United Kingdom* (Guernsey).

Convention No. 63: Statistics of Wages and Hours of Work, 1938

France

New Caledonia

Further to its previous observation, the Committee notes that the establishment of an employment and wages observatory is still in the planning stage at the Territorial Institute for Statistics and Economic Studies (ITSEE). It notes however the indication in the Government's report that the Employment Agency created its own employment observatory at the beginning of 2000. The Committee asks the Government to supply information on the role, if any, of the employment observatory established by the Agency, in compiling statistics of wages and hours of work in accordance with Convention No. 63, and to keep the ILO informed of the establishment of the planned observatory of employment and wages and the resulting statistical developments. The Committee also notes that the draft social pact proposed by the Government plans the establishment of a social database accessible to social partners. It asks the Government to indicate what kind of data it contemplates including in this database.

Recalling that it has been making comments on this matter for many years, the Committee asks the Government to provide the information available on the measures which have been adopted or are envisaged to compile statistics of average earnings and of hours actually worked, in accordance with Part II of the Convention, and of statistics of wages and hours of work in agriculture, in accordance with Part IV.

St. Pierre and Miquelon

The Committee notes the Government's indication that it is necessary to consider applying to St. Pierre and Miquelon the provisions of *Article 23 of the Convention* under which any Member may exclude the areas where it is impracticable to compile statistics complying with the requirements of this Convention from the application of this Convention in whole or in part. It recalls that *Article 23, paragraph 2*, provides that each Member shall indicate in its first report any areas which have, by virtue of the authorization given in *Article 23, paragraph 1*, been excluded from the application of this Convention, and that no Member shall, after the date of its first report, have recourse to the provisions of this Article except in respect of areas so indicated. The Committee asks the Government to take necessary measures to fulfil its obligations under the Convention. It also draws the attention of the Government of France to its responsibilities on this point.

* * *

In addition, a request regarding certain points is being addressed directly to the United Kingdom (Guernsey).

**Convention No. 77: Medical Examination of Young Persons
(Industry), 1946**

Requests regarding certain points are being addressed directly to *France* (French Polynesia, New Caledonia).

**Convention No. 78: Medical Examination of Young Persons
(Non-Industrial Occupations), 1946**

Requests regarding certain points are being addressed directly to *France* (French Polynesia, New Caledonia).

Convention No. 81: Labour Inspection, 1947

A request regarding certain points is being addressed directly to the *Netherlands* (Netherlands Antilles).

**Convention No. 82: Social Policy
(Non-Metropolitan Territories), 1947**

*United Kingdom**Bermuda*

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which reads as follows:

In its previous comments, the Committee recalled the request it made for a number of years asking the Government to take the necessary measures to ensure the application of the provisions prescribed by *Articles 15 and 16 of the Convention*. It also requested the

Government to provide detailed information on the collective agreements, custom and practice in this regard.

In reply to these comments, the Government states that there is no specific wage legislation that provides for the protection of wages as prescribed by *Articles 15 and 16* of the Convention. However, in 1994, the Minister for Labour requested the Labour Advisory Council to prepare a Code of good industrial relations practice. In June 1995, the Minister tabled this Code before the House of Parliament, together with a Guide to good employment practice. Both of these documents were produced with the cooperation of the social partners and focus on voluntary compliance. The Government further states that the provisions of *Articles 15 and 16* of the Convention are therefore observed by means of a series of collective agreements, custom and practice and the voluntary Codes set out above. According to the Government, there has been no decision as to whether or not any social need will be met by putting into place legislation or regulations to conform with the spirit of the Convention as it is anticipated that the Code and the Guide will reinforce established good practice amongst the social partners in Bermuda.

With reference to its previous comments, the Committee notes with regret that the Government did not provide the detailed information requested on the above-mentioned collective agreements, custom and practice in line with *Articles 15 and 16* of the Convention. The Committee again recalls in respect of *Article 16*, that it may be difficult, by means of local customs, to regulate the amount and the manner of repayment of advances in excess of this amount legally irrecoverable. Matters covered by *Article 15* as well would appear to call for legal measures, unless covered explicitly by collective agreements which are applied to all employed persons. The Committee therefore requests the Government to specify if these collective agreements cover all employed persons and to provide a copy of these documents. In case these collective agreements do not cover all employed persons, the Committee trusts the Government will shortly take legal measures to comply with the protection of wages, as prescribed by *Articles 15 and 16* of the Convention.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

France

French Southern and Antarctic Territories

The Committee notes the information provided by the Government in its report. The Committee had already noted the Government's statement in a previous report that a draft decree in Council of State respecting the rights of seafarers' representatives and trade unions would be submitted for their opinion to the social partners and to inter-ministerial consultations. The Government had stated that, under the Metropolitan Maritime Labour Code, the text related in particular to the appointment of alternate ships' representatives and the enhancement of the right of ships' representatives to enable them to accompany the maritime labour inspector, at the inspector's request, during on-board inspections. In its last report, the Government states that the text in question is still in draft form. The Committee notes this information and firmly hopes that the above-noted draft decree will be adopted in the near future and once again

requests the Government to keep it informed of any developments with regard to the above draft decree.

Netherlands

Aruba

The Committee notes with regret that the Government's report has not been received.

Article 3 of the Convention. In its previous comments, the Committee had asked the Government to amend or repeal section 374(a) to (c) of the Penal Code and section 82 of Ordinance No. 159 of 1964 which prohibit the right to strike by public employees under threat of imprisonment. The Committee had noted from a Government's previous report that the Department of Labour was undertaking a complete revision of existing labour legislation and that it was considering requesting ILO technical assistance in this regard. The Committee trusts that the necessary measures will be taken in the near future to bring the abovementioned provisions of the legislation into conformity with the principle of freedom of association and requests the Government to indicate, in its next report, the progress made in this regard.

* * *

In addition, a request regarding certain points is being addressed directly to the *Netherlands (Antilles)*.

Convention No. 89: Night Work (Women) (Revised), 1948

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, Guadeloupe, Martinique, New Caledonia, St. Pierre and Miquelon), *Netherlands* (Netherlands Antilles).

Convention No. 92: Accommodation of Crews (Revised), 1949

A request regarding certain points is being addressed directly to *Denmark* (Faeroe Islands).

Convention No. 94: Labour Clauses (Public Contracts), 1949

Requests regarding certain points are being addressed directly to the following States: *Netherlands* (Aruba, Netherlands Antilles), *United Kingdom* (Anguilla, Bermuda).

Convention No. 95: Protection of Wages, 1949

Requests regarding certain points are being addressed directly to the following States: *Netherlands* (Aruba), *United Kingdom* (Montserrat).

Convention No. 97: Migration for Employment (Revised), 1949

A request regarding certain points is being addressed directly to the *United Kingdom* (British Virgin Islands).

Convention No. 100: Equal Remuneration, 1951

Requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Réunion, St. Pierre and Miquelon), *United Kingdom* (Gibraltar).

Convention No. 101: Holidays with Pay (Agriculture), 1952

Netherlands

Aruba

The Committee notes once again with regret that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its direct request of 1993, which reads as follows:

Article 7, paragraph 3, of the Convention. The Committee would recall that this provision of the Convention calls for payment in respect of holidays to include the cash equivalent of payment in kind in cases where the normal wages include payments in kind. Please indicate whether such payments in kind are made for agricultural workers in Aruba normally and, if so, the measures taken to ensure that these workers receive the cash equivalent of such payments in respect of their holiday pay.

Article 11. The Government is requested to include in future reports information on the approximate number of workers employed in agricultural undertakings and related occupations in Aruba and to supply any collective agreements which might affect the conditions under which they are granted annual holidays with pay.

* * *

Information supplied by *France* (French Polynesia, New Caledonia) in answer to a direct request has been noted by the Committee.

Convention No. 106: Weekly Rest (Commerce and Offices), 1957

Requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *Netherlands* (Netherlands Antilles).

Convention No. 115: Radiation Protection, 1960*France**French Guiana*

The Committee notes that the Government's report contains no reply to previous comments. The Committee is therefore bound to reiterate its previous observation, addressed to France, which read as follows:

1. *Review of maximum permissible doses and effective protection of workers in the light of new knowledge (Articles 3, paragraph 1, and 6, paragraph 2, of the Convention).* The Committee notes that the Government indicates that by the year 2000 the maximum permissible dose of exposure of workers to ionizing radiation currently in force will be replaced by a new limit of 100 mSv over five consecutive years, in accordance with the prescriptions of Directive 96/29/Euratom, adopted in May 1996. With reference to its previous observation and its 1992 general observation, the Committee recalls that the International Commission on Radiological Protection (ICRP), in recommendations formulated in 1990, sets a limit of 20 mSv per annum averaged over five years provided that the actual dose does not exceed 50 mSv in any one year. Moreover, in 1994 the limits established by the ICRP were incorporated in the International Basic Safety Standards. The Committee hopes that the Government will soon be in a position to report the adoption of provisions in conformity with the dose limits mentioned in its 1992 general observation, in the light of current knowledge such as that contained in the 1990 ICRP Recommendations and the 1994 International Basic Safety Standards.

2. The Committee is raising certain questions in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guadeloupe

The Committee notes that the Government's report contains no reply to previous comments. The Committee is therefore bound to reiterate its previous observation, addressed to France, which read as follows:

1. *Review of maximum permissible doses and effective protection of workers in the light of new knowledge (Articles 3, paragraph 1, and 6, paragraph 2, of the Convention).* The Committee notes that the Government indicates that by the year 2000 the maximum permissible dose of exposure of workers to ionizing radiation currently in force will be replaced by a new limit of 100 mSv over five consecutive years, in accordance with the prescriptions of Directive 96/29/Euratom, adopted in May 1996. With reference to its previous observation and its 1992 general observation, the Committee recalls that the International Commission on Radiological Protection (ICRP), in recommendations formulated in 1990, sets a limit of 20 mSv per annum averaged over five years provided that the actual dose does not exceed 50 mSv in any one year. Moreover, in 1994 the limits established by the ICRP were incorporated in the International Basic Safety Standards. The Committee hopes that the Government will soon be in a position to report the adoption of provisions in conformity with the dose limits mentioned in its 1992 general observation, in the light of current knowledge such as that contained in the 1990 ICRP Recommendations and the 1994 International Basic Safety Standards.

2. The Committee is raising certain questions in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Martinique

The Committee notes that the Government's report contains no reply to previous comments. The Committee is therefore bound to reiterate its previous observation, addressed to France, which read as follows:

1. *Review of maximum permissible doses and effective protection of workers in the light of new knowledge (Articles 3, paragraph 1, and 6, paragraph 2, of the Convention).* The Committee notes that the Government indicates that by the year 2000 the maximum permissible dose of exposure of workers to ionizing radiation currently in force will be replaced by a new limit of 100 mSv over five consecutive years, in accordance with the prescriptions of Directive 96/29 Euratom, adopted in May 1996. With reference to its previous observation and its 1992 general observation, the Committee recalls that the International Commission on Radiological Protection (ICRP), in recommendations formulated in 1990, sets a limit of 20 mSv per annum averaged over five years provided that the actual dose does not exceed 50 mSv in any one year. Moreover, in 1994 the limits established by the ICRP were incorporated in the International Basic Safety Standards. The Committee hopes that the Government will soon be in a position to report the adoption of provisions in conformity with the dose limits mentioned in its 1992 general observation, in the light of current knowledge such as that contained in the 1990 ICRP Recommendations and the 1994 International Basic Safety Standards.

2. The Committee is raising certain questions in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Réunion

The Committee notes that the Government's report contains no reply to previous comments. The Committee is therefore bound to reiterate its previous observation, addressed to France, which read as follows:

1. *Review of maximum permissible doses and effective protection of workers in the light of new knowledge (Articles 3, paragraph 1, and 6, paragraph 2, of the Convention).* The Committee notes that the Government indicates that by the year 2000 the maximum permissible dose of exposure of workers to ionizing radiation currently in force will be replaced by a new limit of 100 mSv over five consecutive years, in accordance with the prescriptions of Directive 96/29 Euratom, adopted in May 1996. With reference to its previous observation and its 1992 general observation, the Committee recalls that the International Commission on Radiological Protection (ICRP), in recommendations formulated in 1990, sets a limit of 20 mSv per annum averaged over five years provided that the actual dose does not exceed 50 mSv in any one year. Moreover, in 1994 the limits established by the ICRP were incorporated in the International Basic Safety Standards. The Committee hopes that the Government will soon be in a position to report the adoption of provisions in conformity with the dose limits mentioned in its 1992 general observation, in the light of current knowledge such as that contained in the 1990 ICRP Recommendations and the 1994 International Basic Safety Standards.

2. The Committee is raising certain questions in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

St. Pierre and Miquelon

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation, formulated for France, which read as follows:

1. *Review of maximum permissible doses and effective protection of workers in the light of new knowledge (Articles 3, paragraph 1, and 6, paragraph 2, of the Convention).* The Committee notes that the Government indicates that by the year 2000 the maximum permissible dose of exposure of workers to ionizing radiation currently in force will be replaced by a new limit of 100 mSv over five consecutive years, in accordance with the prescriptions of Directive 96/29/Euratom, adopted in May 1996. With reference to its previous observation and its 1992 general observation, the Committee recalls that the International Commission on Radiological Protection (ICRP), in recommendations formulated in 1990, sets a limit of 20 mSv per annum averaged over five years provided that the actual dose does not exceed 50 mSv in any one year. Moreover, in 1994 the limits established by the ICRP were incorporated in the International Basic Safety Standards. The Committee hopes that the Government will soon be in a position to report the adoption of provisions in conformity with the dose limits mentioned in its 1992 general observation, in the light of current knowledge such as that contained in the 1990 ICRP Recommendations and the 1994 International Basic Safety Standards.

2. The Committee is raising certain questions in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: *France* (French Guiana, Guadeloupe, Martinique, Réunion, St. Pierre and Miquelon), *United Kingdom* (Bermuda, Guernsey, Jersey).

Convention No. 121: Employment Injury Benefits, 1964
[Schedule I amended in 1980]

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 122: Employment Policy, 1964

Netherlands

Aruba

The Committee notes with regret that for the seventh year in succession the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

The Committee notes that the Tripartite Employment Committee, which was established to deal with the rapid changes in supply and demand on the labour market, held several meetings during the period under review. It requests the Government to continue supplying information on these meetings, their objectives, the opinions expressed and the manner in which they are taken into account. Furthermore, the Committee would be grateful if the Government would supply information on the implementation of the development strategy, particularly within the framework of the implementation of the National Development Plan for 1991-95, with an indication of the manner in which it contributes to the promotion of full employment.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, and urges the Government to seek assistance from the Office, if necessary.

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In addition, requests regarding certain points are being addressed directly to the following States: *Denmark* (Greenland), *Netherlands* (Netherlands Antilles), *United Kingdom* (Isle of Man).

Convention No. 127: Maximum Weight, 1967

France

New Caledonia

The Committee notes the Government's report and its reply to its previous comment. It notes that the provisions of the Labour Code of 1926, and particularly sections R.231-72, establish limits in the merchant marine sector for loads for which the manual transport is inevitable. The Committee also notes the Government's announcement that a draft order prepared by the Medical Labour Inspector will be submitted to the Government with a view to improving the regulations in force along the lines indicated by the Committee. In this respect, the Committee notes that the only regulation currently in force concerning the manual transportation of loads by workers is Order No. 1211-T of 19 March 1993, which gives effect to section 5 of Order No. 34/CP of 23 February 1989, which itself only establishes minimum safety and health requirements for the manual transport of loads which constitute a risk for workers, and particularly to their backs and lumbar regions. The Committee recalls that, in its previous comment, it noted the information provided by the Government, and particularly the findings of a survey of occupational physicians.

Articles 3 and 7 of the Convention. The Committee noted the finding of this survey that in general heavy loads are only handled occasionally, except in the case of certain activities, and particularly removals and the unloading of containers loaded with imported products. Furthermore, in practice, the average weight of loads is lower than 55 kg, except in the case of the lifting of sick persons and their transport on stretchers. With regard to the criteria applied by occupational physicians to conclude that a worker is fit for the manual transport of loads over 55 kg, account is taken of Order No. 1211-T of 19 March 1993, giving effect to section 5 of Order No. 34/CP of 23 February 1989, respecting minimum safety and health requirements for the manual transport of loads which constitute a risk for workers, and particularly to their backs and lumbar regions. In

this respect, the Committee noted that section 3 above remained unchanged. The absolute limit is set at 105 kg, and a worker may even be permitted to carry regularly loads heavier than 55 kg if he has been found fit by the occupational physician. While noting the findings of the above survey, the Committee therefore requested the Government to indicate the measures which had been taken or were envisaged to ensure that workers could not be required to engage in the manual transport of a load heavier than 55 kg. Once again, the Committee referred to the ILO publication *Maximum weight in lifting and carrying* (Occupational Safety and Health Series, No. 59, Geneva, 1988), in which it is indicated that 55 kg is the limit recommended from the ergonomic point of view for the admissible weight of loads to be transported *occasionally* by a male worker between 19 and 45 years of age. Similarly, it states that 15 kg is the limit recommended from an ergonomic point of view for the admissible weight of loads to be transported *occasionally* by adult women. The Committee emphasizes that it has been raising this matter for many years. It therefore hopes that the Government will take the necessary measures to give effect to the provisions of the Convention.

Articles 4 and 6. The Committee had noted the technical devices (trolleys, lifts, fixed or travelling cranes) used by workers depending on the financial means of the enterprise to limit or facilitate the manual transport of loads. The Committee requests the Government to continue providing information on the application of this Article in practice.

Part V of the report form. The Committee notes the information provided concerning occupational accidents. The rate of occupational accidents related to the manual handling and transport of loads has remained relatively stable since 1995. In this respect, the Committee notes that 3 per cent of occupational accidents involved absence from work for over 24 hours and that the number of days for which benefits are paid by the CAFAT for this type of occupational accident remains stable but high, since they account for around 30 per cent of the total number of days for which benefits are paid in respect of occupational accidents. The Committee therefore requests the Government to continue providing information on the effect given in practice to the provisions respecting the maximum weight of loads which may be transported manually and, in particular, on the action taken to prevent this type of occupational accident.

The Committee therefore hopes that the Government will take the necessary measures as soon as possible for the adoption of the above draft order and to ensure that this text reflects the points raised by the Committee in its comments and to provide effective protection for workers called upon to lift and transport loads manually.

[The Government is asked to report in detail in 2002.]

Convention No. 129: Labour Inspection (Agriculture), 1969

France

French Guiana

The Committee notes the general information supplied in part reply to its comments. In view of the geographical, human and social particularities of the country, this information to the effect that the provisions of the Convention are applied in the same manner as metropolitan France does not allow the Committee to assess in practical

terms the functioning of the inspection system in agriculture in the territory. In addition, in the absence of annual reports containing specific information on the matters listed under *Article 27 of the Convention*, the Committee has only a few details for appreciation provided in the Government's reports. It appears in particular that, although the regulatory powers vested in labour inspectors give them the same possibilities as in metropolitan France, the means of transport available to them are insufficient and inappropriate, in view of the agricultural areas to be supervised and the need for a vehicle appropriate to the aquatic environment has been stated, in particular. Similarly, it is indicated that, bearing in the mind the various rates of reimbursement, travel expenses which differ from those practised in metropolitan France do not always compensate for the cost incurred. Finally, the Committee notes that the "intensity of the provisions to be taken in emergencies, disputes, etc." make it impossible to carry out the planned inspections.

Noting the information to the effect that the arrangements ensuring application of *Articles 8 and 9* are identical to those made in metropolitan France, but noting that the inspection staff is designated in the report by the vague term "inspection agents", the Committee would be grateful if the Government would supply precise information on the status and conditions of service of the staff working in the territory as compared with those performing the same duties in metropolitan France and indicate the conditions to which recruitment is subject.

Referring to its previous comment, the Committee notes that the Government does not supply any indication on the subject of the 1 per cent inspection rate for the undertakings liable to inspection nor does it note any measures taken or envisaged with a view to improving the performance of the labour inspection service in a situation which, according to the report, is characterized by emergencies and conflicts. The Committee would be grateful if the Government would supply details on the number of agricultural undertakings, by type of activity and also by geographical distribution and on the number of workers employed there permanently and seasonally on the basis of available statistics; it also requests it to indicate the number of vehicles available to inspection officers to carry out inspections according to the frequency and quality required by *Article 21*.

Finally, the Committee requests the Government to take measures, as speedily as is reasonable, in accordance with *Article 26*, to publish and transmit to the ILO an annual inspection report containing information on each of the subjects listed in *Article 27* relating to activities in the agriculture sector. The Committee reminds the Government that this report may be published, in accordance with *Article 26(1)*, either separately or as part of the general annual report of the central inspection authority, under Convention No. 81.

[The Government is asked to report in detail in 2001.]

Martinique

The Committee notes the brief information contained in the Government's report. It notes from page 1 of the annual report of the agricultural work, employment and social policy inspection service attached states "that the work of the overseas departments' labour inspection services is not included in this report. In fact, the Ministry of Agriculture and Fisheries has no labour inspection services for agricultural, employment

and social policy in the overseas départements and territories. Conversely, it makes available to the Ministry of Employment and Solidarity three inspectors who are assigned to the decentralized services of the Ministry for the départements of Guadeloupe, Martinique and Réunion. The result is that statistics on the work of these services are kept by the Ministry of Labour". The Committee notes that information concerning the matters listed for the agricultural sector in *Article 27 of the Convention* are not supplied in the annual reports on Convention No. 81 that the central labour inspection authority used to transmit and which it has not sent for some years. The Government indicates in its report that it is difficult to identify precisely the activities of the service in the agricultural sector. It notes, moreover, that their essential purpose is to cover the provisions of labour legislation concerning, in particular, wages, illegal work or hygiene conditions. According to the Government, reminders about the regulations suffice to make defaulting employers carry out regularization procedures which explains the small number of contravention notices that are served. The Committee notes again in the 1999 report that inspections in the agricultural sector have concentrated on controlling illicit work by concealment of wages and on the obstacles to free designation of workers' delegates. The Committee notes once again, as it did in previous observations, that no annual report on the activities of the labour and manpower inspection services in the territory has been received by the ILO. It is therefore bound once again to remind the Government that the declaration of the application of an international labour Convention to a non-metropolitan territory involves the commitment to fulfil the obligations set out in the Convention and requests the Government once again to take all the necessary measures as soon as possible for the application of the provisions of the Convention, not only in law but also in practice, and to supply detailed information on this subject. It trusts that annual inspection reports will be published and transmitted to the ILO, in accordance with *Article 26 of the Convention*, and that they will contain the information required on all the matters enumerated in *Article 27*.

Labour inspection and child labour. The Committee notes that the study on the employment of young people under the age of 16 in agriculture relating to 1997 and transmitted by the Government as supplementary information to its report does not indicate whether it covers the situation of young workers in Martinique. The Committee requests the Government to supply details in this regard and to indicate in particular whether the supervisory measures concerning the work of young persons under 16 years of age implemented in metropolitan France are also applied in Martinique.

[The Government is asked to report in detail in 2001.]

Réunion

The Committee notes the general information supplied in the Government's report according to which labour inspection in agriculture operates on the basis of the same legislative provisions as in metropolitan France in regard, particularly, to the aspects covered by *Articles 1, 4, 8, 9, 10, 11 and 12 of the Convention*. The Committee notes, however, in the same report that, although the evolution of practices and legislative and regulatory provisions increases the trend towards application of the same rules to agricultural employees in the overseas départements as in the metropolitan territory, a number of issues remain unanswered in regard to the organization of the inspection system. The Committee notes in fact that the complexity of the system prevents any

possibility of ascertaining its effectiveness. The absence of information for assessment seems to be explained by the lack of defined objectives in the subject. The Committee notes in particular that, according to the Government, conditions of recruitment and training for labour inspectors are identical to those for their metropolitan counterparts and that specific duties are organized at national level, in both initial training and further training. However, no training has been held since 1985 in the department, which entails, at least, failure to execute *Article 9(2)*, in the territory of Réunion. The Government indicates, furthermore, that the inspection situation for application of *Articles 14 to 20* and *Articles 22 to 26* is the same as that prevailing in industry and that, in regard to application of *Article 27* concerning the content of the annual inspection report, which should be published and transmitted by the competent authority in accordance with *Article 26*, the particular nature of labour organization in Réunion does not make it possible statistically to separate information pertaining to agriculture supervision from industry and trade. The Committee notes that no report has been received concerning inspection work in general, with the result that it cannot fulfil its duty of supervising application of the Convention. With reference to its previous comments, the Committee therefore reminds the Government once again that the reports on the application of the present Convention transmitted to the ILO under article 22 of the ILO Constitution shall contain: (i) information on the legislative provisions and other measures affecting the application of the Convention; (ii) replies to the questions in the report form on application of the Convention; (iii) information on the transmission of copies of the report to the representatives organizations of employers and workers; (iv) any comments received from these organizations; and (v) the reply to any comment made by the Committee concerning application of the Convention.

Reminding the Government once again that the declaration of the application of an international labour Convention to a non-metropolitan territory involves the commitment to fulfil the obligations set out in the Convention, the Committee therefore requests the Government to take all the necessary measures as soon as possible for the application of the provisions of this Convention, not only in law but also in practice, and to provide information in its next report on the measures taken in practice for this purpose. It also trusts that the annual reports of the inspection services will be published and transmitted to the ILO, in accordance with *Article 26*, and that they will contain the information required on all the subjects enumerated in *Article 27*.

[The Government is asked to report in detail in 2001.]

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In addition, a request regarding certain points is being addressed directly to *France* (New Caledonia).

Convention No. 131: Minimum Wage Fixing, 1970

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 135: Workers' Representatives, 1971

A request regarding certain points is being addressed directly to the Netherlands (Aruba).

Convention No. 136: Benzene, 1971

Requests regarding certain points are being addressed directly to France (Guadeloupe, Martinique).

Convention No. 137: Dock Work, 1973*Netherlands**Aruba*

The Committee notes with regret that the Government's report has not been received for the sixth consecutive year. It must therefore repeat its previous observation, which read as follows:

The Committee takes note of the adoption of the revised Stevedoring Ordinance No. 49 of 1991. It would be grateful if the Government would supply, in its next report, additional information on the following points:

Article 1, paragraph 2, of the Convention. The Government indicates in its previous report received in 1991 that it usually communicates with employers' and workers' organizations on matters concerning the definitions of "dockworkers" and "dock work". Please describe in more detail the arrangements made for revising these definitions in the light of new methods of cargo handling and their effect on the various dockworker occupations, as required under this Article.

Articles 3 and 4. The Government indicated in its previous report that national legislation in force (section 2(j) of the 1946 Act) provided for the registration for all occupational categories of dockworkers. The Committee observes that the new Ordinance No. 49 of 1991 does not contain a provision of that kind. It would be grateful if the Government would clarify whether registers are established and maintained for all occupational categories of dockworkers and, if it is the case, whether arrangements have been made for the periodic review of the strength of such registers. Please also describe, in the latter case, the measures instituted to prevent or minimize detrimental effects on dockworkers when a reduction in the strength of a register becomes necessary.

Article 6. The Committee notes the provisions of Ordinance No. 49 relating to safety, health and welfare of dockworkers. It observes, however, that the Ordinance contains no provisions concerning vocational training of dockworkers. The Committee therefore asks the Government to indicate whether any measures have been taken with a view to ensure that appropriate vocational training provisions apply to dockworkers, in accordance with this Article.

Part V of the report form. The Committee would be grateful if the Government would continue to supply information concerning the practical application of the Convention, including for instance extracts from reports of the competent authorities and particulars on the number of dockworkers on any registers maintained under *Article 3*, and of variations in their numbers, if available.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Convention No. 138: Minimum Age, 1973

Netherlands

Aruba

The Committee notes that the Government's report has not been received. It must, therefore, repeat its previous observation which reads as follows:

The Committee notes the Government's report and the observations of the Teachers' Union of Aruba (SIMAR) attached to the report. It notes that SIMAR points out that minors are seen in supermarkets during school hours performing labour and that it urges the Government to take necessary measures in order to avoid this undesirable situation. It also indicates the trend of minors in secondary school working after school. In addition, the SIMAR also proposes that the Government introduce an Ordinance on minimum wages for those under the age of 18 in order to avoid abuse of the minors by employers. In the absence of the Government's comments on these observations, the Committee requests the Government to reply to the points raised by the SIMAR.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

* * *

In addition, a request regarding certain points is being addressed directly to the *Netherlands (Aruba)*.

Convention No. 140: Paid Educational Leave, 1974

Requests regarding certain points are being addressed directly to the following States: *Netherlands (Aruba), United Kingdom (Anguilla, Jersey)*.

Convention No. 142: Human Resources Development, 1975

Requests regarding certain points are being addressed directly to the following States: *France (French Guiana), Netherlands (Aruba)*.

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

A request regarding certain points is being addressed directly to *France (New Caledonia)*.

Convention No. 145: Continuity of Employment (Seafarers), 1976*Netherlands**Aruba*

The Committee notes with regret that since 1994 the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its comments formulated in December 1995, which read as follows:

The Committee recalls the Government's statement to the effect that there are no merchant shipping undertakings in Aruba. It hopes that the Government will not fail to supply a detailed report on the application of the Convention in conformity with the report form, which will include, in particular, information on the following points:

Article 2, paragraphs 1 and 2, of the Convention. Please describe measures taken to encourage all concerned to provide continuous or regular employment for seafarers. Please indicate the minimum periods of employment or the minimum income or monetary allowance accorded to seafarers and describe the manner in which they are assured.

Part III of the report form. Please indicate the authority or authorities responsible for the application of the laws and regulations mentioned in the Government's first report received in 1991.

Part V of the report form. Please give a general appreciation of the manner in which the Convention is applied in Aruba, including for instance extracts from reports of the authority or authorities referred to under Part III above and, if available, particulars of the number of seafarers and of variations in their number during the period covered by the report.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future, and urges the Government to seek the assistance of the Office, if necessary.

Convention No. 146: Seafarers' Annual Leave with Pay, 1976

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 147: Merchant Shipping (Minimum Standards), 1976

A request regarding certain points is being addressed directly to the *Netherlands* (Aruba).

Convention No. 149: Nursing Personnel, 1977*France**Guadeloupe*

The Committee notes the Government's statement that the regulations applying in Guadeloupe are the same as those applying in metropolitan France and that there are no

repealing provisions. The Committee therefore asks the Government to consider and respond to the points raised below.

1. Further to its previous comments on circular No. 20 of 4 May 1994 changing the methods for taking account of former service and also counting service on humanitarian missions abroad, the Committee notes the Government's statement that the abovementioned circular does not apply to the private sector. It also notes from the information in the Government's report that nursing personnel in this sector do not have the status of employees of the public hospital sector but are recruited under work contracts the terms of which are set in collective agreements negotiated by employers and employees' representatives. The Committee asks the Government to provide a copy of the above collective agreements.

2. The Committee notes the information supplied by the Government concerning working time arrangements. It asks the Government to continue to send information on the application of the adjusted working hours to all hospital establishments and more particularly on the organization and arrangement of working time as discussed in the context of the 35-hour week.

3. In its previous comments, the Committee noted that under section R.714-26-1 of the Public Health Code, the members of nursing care service committees are appointed by drawing lots among volunteers who must let the director of the establishment know that they are willing to stand. The Committee notes the information supplied by the Government to the effect that the purpose of nursing care service committees is to enhance the participation and dialogue of nursing staff in public health establishments. The Committee also notes the information provided by the Government on the method of appointing the members of the above committee by the drawing of lots. It further notes that a memorandum of understanding was signed on 14 March 2000 by the Government and the representative organizations of nursing staff. The memorandum envisages changing this method of appointment and is to be discussed with the trade unions.

The Committee again observes that *Article 5, paragraph 1, of the Convention* does not specify the role to be played by the representatives of nursing personnel in implementing the measures that must be taken, in accordance with methods appropriate to national conditions, to encourage consultation of such personnel in decisions concerning them. Even less does it specify how staff representatives should be appointed. The Committee nonetheless recalls that Paragraphs 19(2) and 20 of the Nursing Personnel Recommendation, 1977 (No. 157), refer expressly to representatives of personnel within the meaning of Article 3 of the Workers' Representatives Convention, 1971 (No. 135), which sets out specific procedures for the appointment of representatives. Furthermore, representatives must be appointed or elected by trade unions or members of trade unions or freely elected by the workers of the enterprise.

The Committee asks the Government to provide information on the discussions concerning the change of method for appointing members of nursing care service committees which are to be held with trade union organizations under the memorandum of understanding signed by the Government and representative organizations organizing staff. It also asks the Government to provide information on the participation of representative organizations in nursing care service committees.

The Committee asks the Government to indicate whether there are any specific points to be noted in respect of Guadeloupe and, if so, to provide the relevant information.

Martinique

The Committee notes the Government's statement that the employment and living conditions of nursing personnel in Martinique are comparable to those in metropolitan France. The Committee notes that the report submitted by the French Government on Convention No. 149 has also been sent as the report for Martinique. The Committee therefore asks the Government to consider and respond to the various points raised below.

1. Further to its previous comments on circular No. 20 of 4 May 1994 changing the methods for taking account of former service and also counting service on humanitarian missions abroad, the Committee notes the Government's statement that the abovementioned circular does not apply to the private sector. It also notes from the information in the Government's report that nursing personnel in this sector do not have the status of employees of the public hospital sector but are recruited under work contracts the terms of which are set in collective agreements negotiated by employers and employees' representatives. The Committee asks the Government to provide a copy of the above collective agreements.

2. The Committee notes the information supplied by the Government concerning working time arrangements. It asks the Government to continue to send information on the application of the adjusted working hours to all hospital establishments and more particularly on the organization and arrangement of working time as discussed in the context of the 35-hour week.

3. In its previous comments, the Committee noted that under section R.714-26-1 of the Public Health Code, the members of nursing care service committees are appointed by drawing lots among volunteers who must let the director of the establishment know that they are willing to stand. The Committee notes the information supplied by the Government to the effect that the purpose of nursing care service committees is to enhance the participation and dialogue of nursing staff in public health establishments. The Committee also notes the information provided by the Government on the method of appointing the members of the above committee by the drawing of lots. It further notes that a memorandum of understanding was signed on 14 March 2000 by the Government and the representative organizations of nursing staff. The memorandum envisages changing this method of appointment and is to be discussed with the trade unions.

The Committee again observes that *Article 5, paragraph 1, of the Convention* does not specify the role to be played by the representatives of nursing personnel in implementing the measures that must be taken, in accordance with methods appropriate to national conditions, to encourage consultation of such personnel in decisions concerning them. Even less does it specify how staff representatives should be appointed. The Committee nonetheless recalls that Paragraphs 19(2) and 20 of the Nursing Personnel Recommendation, 1977 (No. 157), refer expressly to representatives of personnel within the meaning of Article 3 of the Workers' Representatives Convention, 1971 (No. 135), which sets out specific procedures for the appointment of

representatives. Furthermore, representatives must be appointed or elected by trade unions or members of trade unions or freely elected by the workers of the enterprise.

The Committee asks the Government to provide information on the discussions concerning the change of method for appointing members of nursing care service committees which are to be held with trade union organizations under the memorandum of understanding signed by the Government and representative organizations of nursing staff. It also asks the Government to provide information on the participation of representative organizations in nursing care service committees.

The Committee asks the Government to indicate whether there are any specific points to be noted in respect of Martinique and, if so, to provide the relevant information.

* * *

In addition, requests regarding certain points are being addressed directly to *France* (French Guiana, Guadeloupe, Martinique, Réunion).

Convention No. 151: Labour Relations (Public Service), 1978

A request regarding certain points is being addressed directly to the *United Kingdom* (Isle of Man).

Convention No. 160: Labour Statistics, 1985

Requests regarding certain points are being addressed directly to the following States: *Australia* (Norfolk Island), *United Kingdom* (Gibraltar, Isle of Man, Jersey).

**Appendix. Table of reports received on ratified Conventions
(non-metropolitan territories) as of 8 December 2000**
(articles 22 and 35 of the Constitution)

Article 22 of the Constitution of the International Labour Organization provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

- (a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;
- (b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parenthesis.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

Report of the Committee of Experts

Australia

All reports received: 4 requested

Norfolk Island

4 reports requested

* All reports received: Conventions Nos. 29, 67, 100, 122

Denmark

2 reports received: 27 requested

Faeroe Islands

19 reports requested

* No reports received: Conventions Nos. 5, 6, 7, 8, 9, 11, 12, 14, 16, 18, 27, 29, 52, 87, 92, 98, 105, 106, 126

Greenland

8 reports requested

* 2 reports received: Conventions Nos. 11, 105

* 6 reports not received: Conventions Nos. 6, 14, 29, 87, 106, 122

France

219 reports received: 235 requested

French Guiana

34 reports requested

* 32 reports received: Conventions Nos. 5, 6, 12, 14, 17, 22, 23, 24, 27, 29, 42, 45, 52, 55, 56, 71, 81, 87, 89, 94, 100, 101, 105, 106, 114, 115, 124, 129, 136, 142, 144, 147

* 2 reports not received: Conventions Nos. 95, 149

French Polynesia

29 reports requested

* All reports received: Conventions Nos. 6, 14, 16, 22, 23, 24, 29, 52, 53, 55, 56, 69, 71, 77, 78, 87, 94, 95, 100, 101, 106, 115, 122, 124, 125, 126, 129, 144, 149

French Southern and Antarctic Territories

4 reports requested

* All reports received: Conventions Nos. 22, 23, 87, 111

Guadeloupe

49 reports requested

* 45 reports received: Conventions Nos. 3, 5, 6, 11, 12, 14, 17, 22, 23, 24, 27, 29, 35, 36, 37, 38, 42, 45, 55, 56, 71, 81, 87, 89, 92, 94, 95, 100, 101, 105, 106, 112, 114, 115, 120, 124, 126, 129, 131, 135, 136, 141, 142, 144, 149

* 4 reports not received: Conventions Nos. 52, 58, 133, 147

Martinique

40 reports requested

* 37 reports received: Conventions Nos. 5, 6, 11, 12, 14, 17, 22, 23, 24, 27, 29, 42, 45, 52, 55, 56, 71, 81, 87, 89, 94, 95, 100, 101, 105, 106, 112, 114, 115, 123, 124, 126, 129, 136, 142, 144, 149

* 3 reports not received: Conventions Nos. 58, 133, 147

New Caledonia

23 reports requested

* All reports received: Conventions Nos. 6, 14, 22, 23, 24, 29, 52, 55, 56, 71, 77, 78, 81, 87, 94, 95, 100, 101, 106, 115, 122, 124, 129

Reunion

23 reports requested

* 19 reports received: Conventions Nos. 6, 14, 22, 23, 29, 52, 55, 56, 71, 87, 94, 95, 100, 101, 106, 114, 115, 124, 129

* 4 reports not received: Conventions Nos. 24, 42, 147, 149

St. Pierre and Miquelon

33 reports requested

* 30 reports received: Conventions Nos. 6, 12, 14, 17, 22, 23, 24, 29, 52, 55, 56, 63, 71, 77, 78, 81, 87, 89, 94, 95, 100, 101, 105, 106, 122, 124, 129, 131, 144, 149

* 3 reports not received: Conventions Nos. 11, 42, 115

Netherlands

7 reports received: 48 requested

Aruba

29 reports requested

* No reports received: Conventions Nos. 9, 11, 14, 22, 23, 25, 29, 69, 74, 87, 88, 90, 94, 95, 101, 106, 114, 121, 122, 129, 131, 135, 137, 138, 140, 142, 145, 146, 147

Netherlands Antilles

19 reports requested

* 7 reports received: Conventions Nos. 11, 12, 17, 42, 81, 89, 105

* 12 reports not received: Conventions Nos. 14, 22, 23, 25, 29, 87, 90, 94, 95, 101, 106, 122

New Zealand

All reports received: 2 requested

Tokelau

2 reports requested

* All reports received: Conventions Nos. 29, 100

Non-metropolitan territories

United Kingdom

9 reports received: 73 requested

Anguilla	11 reports requested
* 2 reports received: Conventions Nos. 17, 148	
* 9 reports not received: Conventions Nos. 14, 22, 23, 29, 87, 94, 97, 101, 140	
Bermuda	7 reports requested
* No reports received: Conventions Nos. 22, 23, 29, 82, 87, 94, 115	
British Virgin Islands	6 reports requested
* All reports received: Conventions Nos. 14, 23, 29, 87, 94, 97	
Falkland Islands (Malvinas)	5 reports requested
* No reports received: Conventions Nos. 14, 22, 23, 29, 87	
Gibraltar	6 reports requested
* 1 report received: Convention No. 42	
* 5 reports not received: Conventions Nos. 22, 23, 29, 87, 100	
Guernsey	10 reports requested
* No reports received: Conventions Nos. 22, 24, 25, 29, 56, 87, 97, 114, 115, 122	
Isle of Man	11 reports requested
* No reports received: Conventions Nos. 22, 23, 24, 25, 29, 56, 87, 97, 101, 122, (133)	
Jersey	9 reports requested
* No reports received: Conventions Nos. 22, 24, 25, 29, 56, 87, 97, 115, 140	
Montserrat	5 reports requested
* No reports received: Conventions Nos. 14, 29, 87, 95, 97	
St. Helena	3 reports requested
* No reports received: Conventions Nos. 14, 29, 87	

United States

All reports received: 4 requested

American Samoa	1 report requested
* All reports received: Convention No. 55	
Guam	1 report requested
* All reports received: Convention No. 55	
Puerto Rico	1 report requested
* All reports received: Convention No. 55	
United States Virgin Islands	1 report requested
* All reports received: Convention No. 55	

Grand Total

A total of 393 reports were requested, of which 247 reports (62.85 per cent) were received.

**III. Observations concerning the submission to the competent
authorities of the Conventions and Recommendations
adopted by the International Labour Conference**
(article 19 of the Constitution)

Afghanistan

The Committee notes with regret that the Government has not provided information with regard to the submission to the competent authorities of the instruments adopted by the Conference since 1985 (71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Albania

1. The Committee notes that no information has been received from the Government and reiterates its hope that the Government will provide the indications required by the Memorandum of 1980 on the submission to the People's Assembly of the Republic of Albania of the instruments adopted by the Conference at all pending sessions (i.e. 79th, 80th, 81st, 82nd, 83rd, 84th, 86th and 87th Sessions).

2. The Committee recalls the possibility of considering appropriate forms of assistance by the Office in this area.

Algeria

The Committee notes the documents transmitted by the Government concerning the measures taken with a view to the submission to Parliament of the instruments adopted at the 83rd and 87th Sessions of the Conference. It requests the Government also to provide the other information required by the questionnaire at the end of the Memorandum of 1980 concerning the submission to Parliament of the instruments adopted at the 83rd, 84th, 85th, 86th and 87th Sessions of the Conference.

Angola

The Committee notes that the Ministry of Public Administration, Employment and Social Security has submitted to the Council of Ministers for consideration the question of the ratification of Convention No. 182. It recalls its previous observations and therefore requests the Government to provide all the information required in the questionnaire at the end of the Memorandum of 1980 on the submission to the National Assembly of the instruments adopted by the Conference since 1991 (78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Antigua and Barbuda

The Committee asks the Government to communicate the information concerning the submission to the Parliament of Antigua and Barbuda of the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th and 87th Sessions, as required by the questionnaire at the end of the Memorandum of 1980.

Submission to competent authorities

Armenia

The Committee observes with regret that the Government has not responded to its previous observations. It hopes that the Government will indicate soon that the instruments adopted by the Conference since 1993 (i.e. 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions) have been submitted to the competent authorities.

Bangladesh

1. The Committee notes that Conventions Nos. 178, 180 and the Protocol of 1996 adopted at the 84th Session of the Conference – and Convention No. 181 (85th Session) were submitted to the Parliamentary Committee. It hopes that the Government will soon provide information on the submission to the Parliamentary Committee of the remaining instruments adopted at the 77th Session (Convention No. 170 and Recommendation No. 177), 79th Session (Convention No. 173 and Recommendation No. 180), the 84th Session (Convention No. 179, Recommendations Nos. 185, 186, 187) and 85th Session (Recommendation No. 188) and of all the instruments adopted at the 81st, 82nd, 83rd and 86th Sessions.

2. The Committee notes with interest that the Tripartite Consultative Council has recommended to ratify Convention No. 182 and trusts that the Government will provide soon the other information on the submission to the competent authority of the instruments adopted by the Conference at its 87th Session.

Belize

The Committee notes with interest that the ratification of Convention No. 182 was registered on 6 March 2000. It further notes the statement by a Government representative at the Conference Committee in May-June 2000 indicating that the delay to submit the instruments was due to administrative and logistical difficulties. The Committee hopes that the Government will continue its efforts in order to fulfil its constitutional obligation to submit and will supply information on the submission to the competent authorities of the instruments adopted by the Conference at the ten sessions held between 1990 and 1998 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th and 86th Sessions).

Benin

The Committee notes with interest that, by means of Decree No. 98-570 of 18 November 1998, the instruments adopted by the Conference at its 78th, 79th, 80th, 81st, 82nd, 83rd, 84th and 85th Sessions have been submitted to the National Assembly. It also notes that the Government requested the National Assembly, by means of Decree No. 2000-372 of 3 August 2000, for authorization to ratify Convention No. 182. The Committee would be grateful if the Government would provide the other information and documents requested in the questionnaire at the end of the Memorandum of 1980 on the submission to the National Assembly of the instruments adopted by the Conference at its 86th and 87th Sessions.

Bolivia

The Committee notes with regret that the Government has not supplied information on the submission to the competent authorities of the instruments adopted by the Conference since 1990 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Bosnia and Herzegovina

The Committee notes with regret that the Government has not supplied information on the submission to the competent authorities of the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Brazil

The Committee notes with interest that the ratification of Convention No. 182 was registered on 2 February 2000. Furthermore, the Government has provided information on the measures envisaged for the submission of Recommendation No. 189 to the National Congress. The Committee hopes that the Government will continue providing information on the consultations held and the measures taken for the submission to the National Congress of Conventions Nos. 128 to 130, 149 to 151, 156 and 157, as well as the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd, 83rd, 84th, 85th and 86th Sessions of the Conference.

Burkina Faso

1. The Committee notes a communication from the Government of March 2000 indicating that the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th, 86th and 87th Sessions have been submitted to the competent authorities. The Government states that the effect given by the competent authority to the instruments concerned will be reported subsequently. The Committee notes that the communication does not contain the other documents and information on the competent authority, the date and document of submission required by *points I, II(b) and (c) and III of the questionnaire* at the end of the Memorandum of 1980. It would be grateful if the Government would provide the other information required on the submission to Parliament of the instruments adopted at the 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference.

2. Please also indicate the representative organizations of employers and workers to which copies of the information transmitted to the Office have been communicated, in accordance with article 23, paragraph 2, of the Constitution of the Organization (*see also point V of the questionnaire*).

Burundi

The Committee notes with interest the reports on the submission to the President of the Republic, on 20 September 2000, of the Conventions and Protocols adopted by the Conference at its 82nd, 83rd, 84th and 85th Sessions, as well as the instruments on the worst forms of child labour, adopted at the 87th Session. It observes that the recommendations adopted at the 82nd, 83rd and 84th Sessions of the Conference, as well as Recommendation No. 189, adopted at the 86th Session, are not mentioned in the

Submission to competent authorities

reports on submission. It trusts that the Government will maintain its efforts to ensure full respect of the obligation of submission provided under article 19 of the Constitution of the ILO, and will also report on the submission to the National Assembly of the instruments adopted by the Conference since 1995 (82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Cambodia

1. The Committee notes the information supplied by the Government indicating the dates of submission to the Council of Ministers of the instruments adopted by the Conference at its 82nd, 83rd, 84th, 85th and 86th Sessions. It further notes the statement by the Government representative at the Conference Committee in May-June 2000 indicating that the Council of Ministers had not yet submitted the instruments adopted between 1995 and 1997 to the National Assembly or the Senate. The Committee also notes the commitment of the Government to discharge its obligations in this respect as soon as possible. The Government has requested ILO technical assistance.

2. The Committee refers to its previous comments and recalls that the submission of the instruments adopted by the Conference was not carried out, in particular in respect of the 55th (Maritime) Session, October 1970, and the sessions held from June 1973 to June 1994 (58th (Convention No. 137 and Recommendation No. 145), 59th to 63rd, 64th (Convention No. 151 and Recommendation No. 159), 65th to 81st Sessions). In the light of the historical circumstances, the Committee invites the Government, together with the Office, to study ways in which the submission of the abovementioned instruments to Parliament could be done so as to ensure compliance with this important constitutional obligation.

3. The Committee reiterates its hope that the Government will soon be in a position to transmit the other information required by the questionnaire at the end of the Memorandum of 1980 regarding submission to Parliament of the instruments adopted from the 82nd to the 87th Sessions of the Conference, held from 1995 to 1999.

Cameroon

The Committee notes the statement by the Government representative to the Conference Committee (May-June 2000) indicating among other matters that the Office's technical assistance would be desirable in this context. It notes that it has not received information concerning the submission to the National Assembly of the instruments adopted by the Conference from 1983 to 1999, that is at its 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions. It once again urges the Government to make every effort to fulfil the constitutional obligation of submission and hopes that the Office's technical assistance will help the Government to overcome its very important backlog.

Cape Verde

The Committee hopes that the Government will communicate information on the submission to the competent authorities of the instruments adopted by the Conference since 1995 (82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Central African Republic

The Committee notes with interest that the ratification of Convention No. 182 was registered on 28 June 2000. It recalls that for many years submission to the National Assembly of the instruments adopted by the Conference has not been possible, and in particular since 1988 (75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th and 86th Sessions). The Committee hopes that the Government will take appropriate measures in order to overcome this long delay with respect to the submission of the instruments adopted by the Conference to the National Assembly. It recalls, as did the Conference Committee, the possibility of seeking ILO assistance to fulfil this important constitutional obligation.

Chad

1. The Committee notes with interest that the ratification of Convention No. 182 was registered on 6 November 2000. The Government also indicates that the instruments adopted by the Conference at its 84th, 85th and 86th Sessions were submitted at the same time as the instruments adopted at the 87th Session. The Committee requests the Government to provide the other information requested in the Memorandum of 1980 on the proposals made by the Government, any decisions which may have been taken by the National Assembly and the representative organizations of employers and workers to whom the information forwarded to the Director-General has been communicated in relation to the instruments adopted at the 84th, 85th and 86th Sessions (*points II(b) and (c), III and V of the questionnaire at the end of the Memorandum of 1980*).

2. The Committee hopes that the Government will continue to make efforts to overcome its backlog in discharging its constitutional obligation to submit instruments and that it will provide information on the submission to the National Assembly of the instruments adopted at the Conferences held between 1993 and 1996 (80th, 81st, 82nd and 83rd Sessions).

Colombia

The Committee notes with regret that the Government has not communicated any new information regarding the procedures to submit to the legislature the instruments adopted at the following sessions of the Conference: 75th (Convention No. 168), 79th (Convention No. 173), 81st (Recommendation No. 182), 82nd, 83rd, 84th, 85th, 86th and 87th Sessions. The Committee trusts that the Government will shortly communicate the information requested in the questionnaire at the end of the Memorandum of 1980 concerning the submission to the National Congress of the instruments adopted in the aforementioned sessions of the Conference.

Comoros

1. The Committee refers to its 1998 observation and hopes that the Government will shortly be in a position to communicate the information required by the Memorandum of 1980 on the submission to the National Assembly of all instruments adopted by the Conference since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference).

Submission to competent authorities

2. It recalls, as did the Conference Committee, the possibility of seeking ILO assistance to fulfil this important constitutional obligation.

Congo

1. The Committee notes with regret that the Government has provided no new information regarding its obligation of submission. With reference to its previous observation, the Committee again hopes that the Government will be able to report on progress achieved at a very early date, and in particular that the instruments adopted at the 54th (Recommendations Nos. 135 and 136), 55th (Recommendations Nos. 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137 and Recommendation No. 145), 60th (Conventions Nos. 141 and 143, Recommendations Nos. 149, 150 and 151), 61st (Recommendation No. 152), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos. 163, 164 and 165), 68th (Convention No. 157 and Recommendations Nos. 167 and 168), 69th, 70th, 71st (Recommendations Nos. 170 and 171), 72nd, 74th, 75th (Recommendations Nos. 175 and 176), 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference have been submitted to the competent authorities.

2. The Committee recalls, as did the Conference Committee, that ILO assistance is available to carry out this important constitutional obligation.

Costa Rica

1. The Committee notes with interest that the Recommendations and Protocol adopted at the 83rd, 84th and 85th Sessions of the Conference were submitted to the Legislative Assembly on 12 May 2000. The Committee recalls that the instruments adopted at the 86th and 87th Sessions of the Conference were submitted on 9 and 27 September 1999, respectively.

2. The Committee hopes that the Government will soon be able to provide information on the submission to the Legislative Assembly of the instruments adopted at the 78th (Recommendation No. 179), 79th (Recommendation No. 180), 80th (Convention No. 174 and Recommendation No. 181), 82nd (Protocol of 1995 and Recommendation No. 183), 83rd (Convention No. 177), 84th (Conventions Nos. 178, 179 and 180) and 85th (Convention No. 181) Sessions of the Conference.

Democratic Republic of the Congo

The Committee would be grateful if the Government would supply the information required by the questionnaire at the end of the Memorandum of 1980 on the submission to the competent authorities of the instruments adopted by the Conference at its 83rd, 84th, 85th, 86th and 87th Sessions.

Djibouti

The Committee notes with regret that the Government has not provided information regarding the submission to the competent authorities of the instruments adopted at the 66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th, 85th, 86th and 87th Sessions of the Conference. The Committee hopes that the Government will take the necessary measures in the near future to overcome this

serious delay in meeting the constitutional obligation of submission and recalls, as did the Conference Committee, that the technical assistance of the competent services of the ILO is available to the Government.

Dominica

The Committee recalls that the instruments adopted at the 80th, 81st, 82nd and 83rd Sessions were submitted only to Cabinet and the Government had decided against ratification. Therefore, the Committee recalls again that the competent national authority to which the instruments adopted by the International Labour Conference should normally be submitted is the legislature (Part I of the Memorandum of 1980). It reiterates its hope that the Government will announce soon that the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions) have been submitted to the competent authorities, in the sense of article 19 of the Constitution.

Ecuador

The Committee notes with interest that the ratification of Conventions No. 138 and No. 182 was registered on 19 September 2000. Furthermore, the Committee notes the detailed information provided by the Government with regard to the submission to the National Congress of Convention No. 172, of the two instruments adopted at the 77th Session of the Conference (Convention No. 171 and Recommendation No. 178) and the instruments adopted at the 81st Session. The Committee welcomes this progress and trusts that the Government will continue supplying information concerning the submission to the National Congress of the remaining instruments adopted at the 77th Session (Convention No. 170 and the Protocol of 1990), the 79th Session (Convention No. 173), the 80th Session (Convention No. 174) and the 82nd Session (Convention No. 176 and the Protocol of 1995).

El Salvador

The Committee notes with interest that the ratification of Conventions Nos. 100, 155, 156 and 182 were registered on 12 October 2000. It recalls its 1999 observation and notes that for the constitutional obligation to submit instruments adopted by the Conference to the competent authorities to be fulfilled, the competent authorities (in this case the Congress of the Republic of El Salvador) must be in a position to take a decision regarding the instruments submitted to it. The Committee therefore trusts that the Government will continue to take measures to ensure that the instruments adopted by the Conference at the 62nd, 65th, 66th, 68th, 70th, 82nd, 83rd, 84th, 85th and 86th Sessions of the Conference, and the remaining instruments of the 63rd (Convention No. 148 and Recommendations Nos. 156 and 157), 64th (Convention No. 151 and Recommendations Nos. 158 and 159), 67th (Convention No. 154 and Recommendation No. 163) and 69th (Recommendation No. 167) Sessions are submitted to the Congress of the Republic, and that it will provide the information on them required by the Memorandum of 1980.

Submission to competent authorities

Equatorial Guinea

The Committee notes with regret that the Government has not provided information in respect of the submission to the competent authorities of the instruments adopted by the Conference at its 80th, 81st, 82nd, 83rd, 85th, 86th and 87th Sessions.

Eritrea

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference since 1994 (82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

2. The Committee further notes that Eritrea has been a Member of the Organization since 7 June 1993. It recalls that under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars on this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Fiji

The Committee asks the Government to communicate the information concerning the submission to the competent authorities of the instruments adopted by the Conference since 1993 (83rd, 84th, 85th, 86th and 87th Sessions), as required by the questionnaire at the end of the Memorandum of 1980.

Gabon

The Committee notes a communication from the Ministry of Labour dated 17 February 2000 requesting the Government to submit to Parliament the instruments adopted at the 87th Session of the Conference. It once again hopes that the Government will soon be in a position to provide the information required by the Memorandum of 1980 concerning the submission to Parliament of the instruments adopted at the 74th, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference.

Grenada

The Committee notes with regret that the Government has not replied to its comments for many years. It hopes the Government will indicate shortly that the instruments adopted by the Conference since 1994 (at the 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions) have been submitted to the competent authorities.

Report of the Committee of Experts

Guatemala

1. The Committee notes with interest that Conventions Nos. 173, 176, 177, 179 and 181, Recommendations Nos. 179 to 184 and the Protocol of 1995 were submitted to the Congress of the Republic on 17 September 1999. Furthermore, the Committee notes that Convention No. 182 (adopted by the 87th Session of the Conference) has been transmitted to the General Secretariat of the President's Office for its referral to the Congress of the Republic and its approval.

2. The Committee however recalls that the submission to the Congress of the Republic is still pending of the instruments adopted at the 74th Session (Maritime, October 1987), the two instruments adopted at the 75th Session (June 1988) (Convention No. 168 and Recommendation No. 176), 77th Session (June 1990) (Conventions Nos. 170 and 171, Recommendations Nos. 177 and 178, Protocol of 1990), 78th Session (June 1991) (Convention No. 172), 80th Session (June 1993) (Convention No. 174), 81st Session (June 1994), (Convention No. 175), 84th Session (Maritime, October 1996) (Conventions Nos. 178 and 180, Recommendations Nos. 185 to 187, Protocol of 1996), 85th Session (June 1997) (Recommendation No. 188) and 86th Session (June 1998) (Recommendation No. 189).

3. The Committee trusts that the Government will continue to make every effort to provide the respective information in the near future on the submission of the remaining instruments to the Congress of the Republic.

Guinea-Bissau

The Committee notes the statement by the Government representative to the Conference Committee in May-June 2000 recalling the efforts made previously to submit instruments to the National People's Assembly and to ratify Conventions. The Ministry of Solidarity and Labour of Portugal has collaborated in the translation of the instruments. The Government affirmed its readiness to make every effort to respect its obligations. While welcoming this commitment, the Committee once again hopes that the measures taken by the Government will result in the submission to the National People's Assembly of the instruments adopted by the Conference since 1992 (79th to 87th Sessions). It once again recalls that the Office can provide technical assistance to facilitate compliance with this important constitutional obligation.

Haiti

1. The Committee notes that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference. It recalls that the instruments in respect of which the Government has not provided information on the submission to the competent authorities are the following:

- (a) the remaining instruments from the 67th Session (Conventions Nos. 154 and 155 and Recommendations Nos. 163 and 164);
- (b) the instruments adopted at the 68th Session;
- (c) the remaining instruments adopted at the 75th Session (Convention No. 168 and Recommendations Nos. 175 and 176); and

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- (d) all the instruments adopted from 1989 to 1998 (76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference).

2. The Committee once again recalls, in the same way as the Conference Committee, that it is possible to seek the Office's assistance with a view to fulfilling this important constitutional obligation.

Honduras

1. The Committee notes the statement by the Government representative to the Conference Committee in May-June 2000 to the effect that a technical team has been established to analyse and study Conventions and Recommendations with a view to sending them to Congress for their examination and subsequent ratification. The Government representative requested the technical assistance of the Office. The Committee hopes that the Government will obtain such assistance so that it is in a position to provide the following information in the near future:

- (a) with regard to the instruments adopted at the 69th, 71st and 72nd Sessions of the Conference, which have already been submitted, the Committee requested the information required under *points II(b) and (c) and III of the questionnaire* at the end of the Memorandum of 1980;
- (b) the Government was asked to provide a copy of the letter of submission of the instruments adopted at the 67th, 70th and 75th Sessions, and
- (c) the Committee also requested the Government to indicate whether the Seafarers' Welfare Convention, 1987 (No. 163), and Recommendation (No. 173), 1987, adopted at the 74th (Maritime) Session, October 1987, have been submitted.

2. The Committee notes once again the continued lack of information required on the submission of the instruments adopted between 1989 and 1999 at the 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference.

India

The Committee notes the detailed information supplied by the Government on the submission to the Upper House and the Lower House of the Parliament of India on 15 and 16 May 2000 of the instruments adopted by the Conference at its 84th Session. The Government has also indicated that the Recommendation adopted at the 86th Session was submitted to the Upper House and the Lower House on 19 and 20 April 2000. The Committee appreciates this information and trusts that the Government will indicate soon that the instruments adopted at the 78th, 79th, 80th, 81st, 82nd, 85th and 87th Sessions of the Conference have also been submitted to the competent authorities.

Kazakhstan

1. The Committee regrets that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference since 1993 (the 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference).

2. The Committee notes that the Republic of Kazakhstan has been a member State since 31 May 1993. It recalls that under article 19 of the Constitution of the International

Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office adopted in 1980 a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted. The Committee trusts that the Government will report shortly on the submission to the competent authorities of the instruments adopted at the 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference.

3. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

Kenya

In reply to its previous observation, the Government indicates that it has embarked on the process of submission to the National Assembly of the instruments adopted from the 81st to the 87th Sessions of the Conference. The Tripartite Advisory Board has recommended ratifying Convention No. 182. The Committee trusts that the Government will provide the other information requested by the questionnaire at the end of the Memorandum of 1980 on the submission to the National Assembly of the instruments adopted at the Conference from 1994 to 1999 (81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Kyrgyzstan

1. The Committee regrets that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

2. The Committee further notes that Kyrgyzstan has been a Member of the Organization since 31 March 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of

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submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Lao People's Democratic Republic

The Committee notes with regret that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference have been submitted to the competent authorities.

Latvia

1. The Committee regrets that the Government has not communicated information regarding the submission to the competent authorities of the instruments adopted by the Conference since 1992 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

2. The Committee recalls that, under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office adopted in 1980 a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Government may deem it useful to consider appropriate forms of ILO assistance in this area.

Lesotho

The Committee notes again that the Government has not replied to its previous observations. It hopes that the Government will indicate shortly that the instruments adopted by the Conference since 1995 (82nd, 83rd, 84th, 85th, 86th and 87th Sessions) have been submitted to the competent authorities.

Madagascar

The Committee notes the information that the Ministry of Labour intends to propose the ratification of Convention No. 182 to the competent authorities. In this respect, it notes that the representative organizations of employers' and workers' were consulted previously. With reference to its previous comments, the Committee once again requests the Government to provide the relevant information on the submission to the National Assembly of the instruments adopted at the 55th, 69th (Recommendation No. 167), 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference.

Mali

The Committee notes with interest that the ratification of Convention No. 182 was registered on 14 July 2000. It also notes the statement by a Government representative to the Conference Committee in May-June 2000 indicating that all the measures have been taken for the submission to the competent authorities of the instruments concerned, with the technical assistance of the multidisciplinary advisory team in Dakar. It hopes that the Government will continue its efforts to resolve its delay in complying with the constitutional obligation of submission and that it will provide information on the submission to the National Assembly of the instruments adopted at the eight sessions of the Conference held between 1992 and 1998 (79th, 80th, 81st, 82nd, 83rd, 84th, 85th and 86th Sessions).

Mauritania

The Committee notes that the Government has not supplied the information requested in its previous observation. It again expresses its hope that the Government will take the necessary measures to enable it in the very near future to indicate that the instruments adopted by the Conference since 1994 (81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions) have been submitted to the National Assembly.

Mongolia

1. The Committee notes with interest that the Parliament of Mongolia approved the ratification of Convention No. 182 on 6 October 2000.

2. The Committee notes that the Government has not provided information regarding the submission to the competent authorities of the instruments adopted by the Conference between 1995 and 1998 (82nd, 83rd, 84th, 85th and 86th Sessions).

3. The Committee recalls that under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office has adopted a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

Morocco

1. The Committee notes the detailed report supplied by the Government which indicates that, by letter No. 1307 of 24 May 2000, the Prime Minister reported that the instruments adopted at the 75th, 76th, 77th, 78th, 81st, 82nd, 83rd, 84th and 86th Sessions of the Conference had been submitted to the competent authorities. The Committee requests the Government to state whether the Protocol of 1995 has also been submitted and to provide information on the submission to Parliament of the instruments

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adopted at the 80th Session (June 1993, Convention No. 174 and Recommendation No. 181).

2. Furthermore, the Committee notes with interest that the ratification of Conventions Nos. 178, 179 and 180 was registered on 1 December 2000 and that the procedure for the ratification of Convention No. 182 has been initiated. It would be grateful if the Government would indicate whether the instruments adopted at the 87th Session of the Conference have been submitted to Parliament.

Nigeria

The Committee notes that the Government has not communicated information regarding the submission to the competent authorities of the instruments adopted by the Conference at its 80th, 83rd, 84th, 85th, 86th and 87th Sessions.

Pakistan

1. The Committee notes the communication received in March 2000 from the Government indicating that the competent authority has decided to give effect to the provisions of Recommendation No. 189 adopted by the Conference at its 86th Session (June 1998). It further notes the information provided by the Government in September 2000 in the sense that the instruments on the worst forms of child labour adopted by the Conference at its 87th Session (June 1999) had not yet been submitted to the competent authority and that the process of tripartite consultation is still going on to reach a consensus. As regards other instruments, the Government is consulting the workers' and employers' organizations as well as the concerned ministries in order to incorporate the views in the summary to be submitted to the competent authority.

2. In its previous observation, the Committee noted that the Government had stated that the instruments adopted by the Conference at its 83rd Session have been submitted to the competent authority, i.e. the Cabinet. The Committee recalls that the expression "competent authorities" used in article 19 of the Constitution of the Organization is intended to refer to a legislative and not to a ratifying authority. In the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, adopted in 1980, the ILO Governing Body has indicated that the competent national authority should normally be the legislature (see Part I of the Memorandum of 1980).

3. The Committee also recalls that the obligation of governments to submit the instruments to the competent authorities does not imply any obligation to propose the ratification or acceptance of the instruments in question. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities.

4. The Committee trusts that the Government will continue to report on the measures taken to ensure full compliance with the obligation to submit, established in article 19 of the Constitution of the Organization, and will be able to indicate in the near future that the instruments adopted at the 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference have been submitted to Parliament.

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Papua New Guinea

With reference to its previous comments, the Committee notes with satisfaction that the National Parliament, on 13 April 2000, took note of all the instruments adopted by the Conference since its 66th to 87th Sessions. It also notes with interest that the ratification of Conventions Nos. 87, 100, 103, 111, 158 and 182 was registered on 2 June 2000.

Saint Lucia

The Committee notes with interest that the ratification of Conventions Nos. 154, 158 and 182 was registered on 6 December 2000. It further notes the information provided in May 2000 by the Government on the steps taken in order to submit to the Cabinet of Ministers some Conventions. The Government also indicated that those Conventions would be placed before Parliament at a next sitting. The Committee recalls that, in accordance with article 19, paragraphs 5 and 6, of the Constitution of the Organization, Saint Lucia as a Member of the Organization has the obligation to submit to Parliament all the remaining Conventions, Recommendations and protocols adopted by the Conference from 1980 to 1998 (i.e. 66th, 67th (Conventions Nos. 155 and 156, Recommendations Nos. 164 and 165), 68th (Convention No. 157 and Protocol of 1982), 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, and 86th Sessions) and provide in this respect the indications requested by the questionnaire at the end of the Memorandum of 1980. The Committee also recalls that the Conference Committee in May-June 2000 has expressed again its hope that Saint Lucia would, in the near future, send reports containing information relating to the submission of the instruments adopted by the Conference to Parliament. Thus, the Committee again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.

Sao Tome and Principe

The Committee notes the statement by the Government representative to the Conference Committee (May-June 2000) wishing to receive assistance from the Office with a view to being able to comply with its constitutional obligations. The Committee notes that the Government has not provided the information required in the questionnaire at the end of the Memorandum of 1980 on the submission to the competent authorities of the instruments adopted by the Conference since 1990 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions). It urges the Government to make every effort to fulfil the constitutional obligation of submission and hopes that the technical assistance of the Office will help the Government to overcome this important backlog.

Senegal

The Committee notes with interest that the ratification of Convention No. 182 was registered on 1 June 2000. It also notes the statement by the Government representative to the Conference Committee (May-June 2000) indicating, among other matters, that the Ministry of Labour is faced with many organizational, material and human problems. All the files for submission were ready and on the point of being transmitted to the President of the Republic, who alone is competent to submit them to Parliament. The Committee

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hopes that information on submission will be provided to the Office in the near future and that the Government will be in a position to indicate that the instruments adopted by the Conference at its eight sessions held between 1992 and 1998 (the 79th, 80th, 81st, 82nd, 83rd, 84th, 85th and 86th Sessions) have been submitted to Parliament.

Seychelles

1. The Committee notes that Seychelles has ratified the eight fundamental Conventions. It further notes the statement by the Government representative at the May-June 2000 Conference Committee indicating that his country would seek the assistance of the ILO to help it meet its obligations to submit international labour standards to the competent authorities.

2. The Committee recalls its previous observations, and again urges the Government to act in order to be in a position to indicate very soon that the instruments adopted from 1977 to 1998 (at the 63rd (Convention No. 149 and Recommendation No. 157), 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th and 86th Sessions) have been submitted to the National Assembly in accordance with article 19 of the Constitution of the Organization.

Sierra Leone

The Committee notes the statement by the Government representative to the Conference Committee in May-June 2000 indicating that Conventions Nos. 138, 151 and 182 had been submitted to Parliament for ratification and calling for further technical assistance in relation to the submission of instruments to the competent authorities. The Committee hopes that the Government will obtain the technical assistance requested in this matter and will be in a position to fully report on the submission to Parliament of the instruments adopted by the Conference since October 1976 (Convention No. 146 and Recommendation No. 154 adopted at the 62nd Session and the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Solomon Islands

The Committee notes with regret that the Government has not supplied information on the submission to the competent authorities of the instruments adopted by the Conference since 1984 (70th, 71st, 72nd, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions). The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission, and recalls that the Office can provide technical assistance to overcome this serious delay.

Somalia

The Committee trusts that, when the national circumstances permit, the Government will provide information on the submission to the competent authorities with regard to the instruments adopted by the Conference since October 1976 (63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

Spain

The Committee notes with interest that the Council of Ministers held on 21 July 2000 approved the Agreement authorizing the ratification of Convention No. 182 and submitted it to the *Cortes*. The Committee refers to its previous observations and once again hopes that the Government will be in a position to indicate in the near future that certain instruments adopted at the 63rd Session (Convention No. 149 and Recommendation No. 157) and the 75th Session (Convention No. 168 and Recommendation No. 176), and the instruments adopted at the 80th, 81st, 83rd, 84th and 86th Sessions of the Conference have indeed been submitted to the legislative body.

Sudan

1. The Committee notes the communication received in October 2000 indicating that the instruments adopted by the Conference at its 87th Session were submitted to the competent authorities and that Conventions Nos. 138 and 182 were both in the process of ratification. It would be grateful if the Government would also supply the other indications requested by the Memorandum of 1980 in relation with the nature of the competent authorities and the representative organizations of employers and workers (*points I and V of the questionnaire* at the end of the Memorandum).

2. The Committee reiterates its hope that the Government will indicate shortly that the instruments adopted by the Conference between 1994 and 1998 (81st, 82nd, 83rd, 84th, 85th and 86th Sessions) were also submitted to the competent authorities.

Suriname

The Committee regrets that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted at the 67th (Convention No. 154), 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference have been submitted to the competent authorities.

Swaziland

The Committee notes with interest the detailed information forwarded by the Government on the submission to Parliament, on 18 October 1999, of the instruments adopted by the Conference at its 78th, 79th, 80th, 81st, 82nd and 83rd Sessions. It further notes that the instruments adopted at the 85th, 86th and 87th Sessions were submitted to the Cabinet on 28 January 2000. The Committee welcomes this positive step and invites the Government to provide the other information requested by the Memorandum of 1980 on the submission to Parliament of the Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), adopted at the 82nd Session, and of the instruments adopted at the 84th, 85th, 86th and 87th Sessions.

Syrian Arab Republic

The Committee notes the written and oral information provided by the Government to the Conference Committee in May-June 2000. Following an exchange of views between the various competent departments, in May 2000 the Office of the Prime Minister decided to coordinate between the Ministries of Social and Labour Affairs and

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the Minister of State responsible for Parliamentary Affairs in order to find the appropriate mechanism for the submission of the instruments adopted by the Conference to the People's Assembly (Majlis al-Chaab). The Government confirmed its commitment to discharge its obligations under the Constitution of the Organization and its decision to submit all the instruments adopted by the Conference to the People's Assembly, once they had been duly examined by the competent authorities. The Government also provided information on the steps taken for the examination, in consultation with the social partners, of the instruments on the worst forms of child labour adopted by the Conference at its 87th Session. The Committee refers to the comments that it has been making for several years, and particularly its observation of 1999, and hopes that the Government will be in a position to report in the near future that the instruments adopted by the Conference at the 66th, 69th (Recommendations Nos. 167 and 168) Sessions and between 1984 and 1999 (70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions) have been submitted to the People's Assembly and that it will provide in this respect the information requested in the questionnaire at the end of the Memorandum of 1980.

United Republic of Tanzania

1. The Committee observes that the Government has not provided new information on the submission to the competent authorities of the remaining instruments adopted by the Conference from 1980 to 1999 (66th, 67th, 68th, 72nd, 74th, 75th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

2. The Committee also recalls that in previous observations it had asked the Government to indicate the date on which the instruments adopted from the 54th to the 65th Sessions were submitted to Parliament.

3. The Committee urges the Government to make every effort to comply with the constitutional obligation of submission, and recalls that the Office can provide technical assistance to overcome this serious delay.

Thailand

The Committee would be grateful if the Government would provide information in relation to the submission to the competent authorities of the instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th and 87th Sessions).

The former Yugoslav Republic of Macedonia

The Committee would be grateful if the Government would indicate whether the instruments adopted at the 83rd, 84th, 85th, 86th and 87th Sessions of the Conference have been submitted to the competent authorities.

Turkmenistan

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference since 1994 (81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

2. The Committee further notes that Turkmenistan has been a Member of the Organization since 24 September 1993. It recalls that under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office has adopted in 1980 a Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Uganda

The Committee notes with regret that the Government has not replied to its previous comments. It hopes that the Government will indicate shortly that the instruments adopted by the Conference since 1994 (81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions) were submitted to the competent authorities.

Uruguay

The Committee notes with interest that, after consulting the Tripartite Group, the Executive Branch has submitted Convention No. 182 for ratification to the National Parliament. It refers to its previous comments and would be grateful if the Government would provide additional information on the submission of Convention No. 176 and Recommendation No. 183, adopted at the 82nd Session of the Conference (June 1995), and the submission to the General Assembly of the instruments adopted at the 80th, 83rd, 85th and 86th Sessions of the Conference.

Uzbekistan

1. The Committee notes with regret that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference since 1993 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th and 87th Sessions).

2. The Committee further notes that Uzbekistan has been a Member of the Organization since 31 July 1992. It recalls that under article 19 of the Constitution of the International Labour Organization, each of the Members undertakes that it will bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action. The Governing Body of the International Labour Office has adopted a Memorandum in 1980 concerning the obligation to submit Conventions and Recommendations to the competent authorities, asking for particulars about this question. The Committee hopes that the Government will provide all the information

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requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.

3. The Committee urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Venezuela

1. The Committee notes the information supplied by the Government concerning the submission to the Congress of the Republic and the examination by Parliament of certain instruments (Conventions Nos. 167, 169, 170, 174 and 176; Recommendations Nos. 175, 177, 181, 183). The Committee trusts that the Government will continue to make progress in this respect and will provide information on the submission to the Congress of the Republic of the remaining instruments adopted at the 75th Session (Convention No. 168 and Recommendation No. 176); 77th Session (Convention No. 171 and Recommendation No. 178, the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89)); and 82nd Session (Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81)) of the Conference.

2. The Committee notes that it has not received information on the submission to the Congress of the Republic of the instruments adopted at the 71st (Convention No. 161), 74th (Conventions Nos. 163, 164, 165 and 166, and Recommendation No. 174), 78th (Convention No. 172), 79th, 80th, 81st, 83rd, 84th, 85th, 86th and 87th Sessions of the Conference. The Committee hopes that this substantial delay in complying with the obligation of submission will be resolved in the near future.

Yemen

1. The Committee notes with interest that the ratification of Convention No. 182 was registered on 15 June 2000. It also notes with interest the communication dated 28 July 2000 by which the Minister of Labour and Vocational Training transmitted to the President of the House of Representatives the texts of the Conventions and Recommendations adopted by the Conference since October 1987. It hopes that the Government will continue to supply information regularly on the submission to the House of Representatives of the instruments adopted by the Conference and it requests the Government to provide it with indications of the proposals made by the Government and any decisions taken by the House of Representatives with regard to the instruments submitted (*points II(b) and III of the questionnaire* at the end of the Memorandum of 1980). Please also indicate the representative organizations of employers and workers to which copies were forwarded of the information sent to the Director-General (article 23, paragraph 2, of the Constitution of the Organization).

2. The Committee would be grateful if the Government would indicate whether the Protocols adopted by the Conference in 1990, 1995 and 1996 have also been submitted to the House of Representatives.

3. The Committee notes the technical assistance received by the Government and hopes that the multidisciplinary advisory team will be able to continue to provide it with assistance.

Zambia

The Committee would be grateful if the Government would indicate that the instruments adopted by the Conference since 1996 (83rd, 84th, 85th, 86th and 87th Sessions) have been submitted to the competent authorities.

* * *

In addition, requests regarding certain points are being addressed directly to the following States: Argentina, Austria, Azerbaijan, Bahamas, Bahrain, Belarus, Belgium, Chile, Côte d'Ivoire, Croatia, Cuba, Cyprus, Denmark, Estonia, France, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Guyana, Indonesia, Islamic Republic of Iran, Iraq, Israel, Italy, Jordan, Kuwait, Lebanon, Liberia, Libyan Arab Jamahiriya, Malawi, Malaysia, Malta, Mexico, Republic of Moldova, Mozambique, Myanmar, Nepal, Netherlands, New Zealand, Niger, Oman, Paraguay, Peru, Philippines, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Slovakia, Slovenia, Sweden, Tajikistan, Togo, Trinidad and Tobago, Ukraine, United Arab Emirates, Zimbabwe.

Appendix I. Information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities (31st to 87th Sessions of the Conference, 1948-99)¹

Note. When only some of the instruments adopted at any one session have been submitted, the number of the Convention or Recommendation is given in parentheses, preceded by the letter C or R. Protocols are indicated by the letter P followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.

Account has been taken of the date of admission and readmission of States Members to the Organization for determining the sessions of the Conference whose texts are taken into consideration.

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Afghanistan	31-70	71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Albania	31-49, 85	78, 79, 80, 81, 82, 83, 84, 86, 87
Algeria	47-82	83, 84, 85, 86, 87
Angola	61-79	80, 81, 82, 83, 84, 85, 86, 87
Antigua and Barbuda	68-82	83, 84, 85, 86, 87
Argentina	31-83, 87	84, 85, 86
Armenia	—	80, 81, 82, 83, 84, 85, 86, 87
Australia	31-86	87
Austria	31-82, 84-85	83, 86, 87
Azerbaijan	79 (C173), 80-82, 85-87	79 (R180), 83, 84
Bahamas	61-84, 86	85, 87
Bahrain	63-87	—
Bangladesh	58-76, 77 (C171, R178), 78, 80, 84 (C178, C180, P147), 85 (C181)	77 (C170, P089, R177), 79, 81, 82, 83, 84 (C179, R185, R186, R187), 85 (R188), 86, 87

¹ The Conference did not adopt any Convention or Recommendation at its 57th Session (June 1972) and 73rd Session (June 1987).

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State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Barbados	51-87	–
Belarus	37-83, 86-87	84, 85
Belgium	31-75, 77-87	76
Belize	68-76, 87	77, 78, 79, 80, 81, 82, 83, 84, 85, 86
Benin	45-85, 87	86
Bolivia	31-79	80, 81, 82, 83, 84, 85, 86, 87
Bosnia and Herzegovina	–	80, 81, 82, 83, 84, 85, 86, 87
Botswana	64-87	–
Brazil	31-50, 51 (C127, R128, R129, R130, R131), 53 (R133, R134), 54-62, 63 (C148, R156, R157), 64 (R158, R159), 65-66, 67 (C154, C155, R163, R164, R165), 68 (C158, P110, R166), 69-77, 80, 87	51 (C128), 52, 53 (C129, C130), 63 (C149), 64 (C150, C151), 67 (C156), 68 (C157), 78, 79, 81, 82, 83, 84, 85, 86
Bulgaria	31-87	–
Burkina Faso	45-87	–
Burundi	47-77, 78 (R179), 79-81, 82 (C176, P081)	78 (C172), 82 (R183), 83, 84, 85, 86, 87
Cambodia	53-54, 56, 58 (C138, R146), 64 (C150, R158)	55, 58 (C137, R145), 59, 60, 61, 62, 63, 64 (C151, R159), 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Cameroon	44-68, 72, 74	69, 70, 71, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Canada	31-87	–
Cape Verde	65-81	82, 83, 84, 85, 86, 87
Central African Republic	45-74, 87	75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86
Chad	45-79, 84-87	80, 81, 82, 83
Chile	31-81, 82 (C176, R183), 83, 87	82 (P081), 84, 85, 86
China	31-87	–

Submission to competent authorities

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Colombia	31-74, 75 (C167, R175, R176), 76-78, 79 (R180), 80, 81 (C175)	75 (C168), 79 (C173), 81 (R182), 82, 83, 84, 85, 86, 87
Comoros	65-78	79, 80, 81, 82, 83, 84, 85, 86, 87
Congo	45-53, 54 (C131, C132), 55 (C133, C134), 56, 58 (C138, R146), 59, 60 (C142), 61, 63 (C148, C149, R157), 64-66, 67 (C154, C155, C156), 68 (C158), 71 (C160, C161), 75 (C167, C168), 76	54 (R135, R136), 55 (R137, R138, R139, R140, R141, R142), 58 (C137, R145), 60 (C141, C143, R149, R150, R151), 62, 63 (R156), 67 (R163, R164, R165), 68 (C157, P110, R166), 69, 70, 71 (R170, R171), 72, 74, 75 (R175, R176), 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Costa Rica	31-77, 78 (C172), 79 (C173), 81, 82 (C176), 83 (R184), 84 (P147, R185, R186, R187), 85 (R188), 86-87	78 (R179), 79 (R180), 80, 82 (P081, R183), 83 (C177), 84 (C178, C179, C180), 85 (C181)
Côte d'Ivoire	45-82	83, 84, 85, 86, 87
Croatia	80-85	86, 87
Cuba	31-86	87
Cyprus	45-84, 87	85, 86
Czech Republic	80-87	-
Democratic Republic of the Congo	45-82	83, 84, 85, 86, 87
Denmark	31-85, 87	86
Djibouti	64-65, 67, 71-72, 83	66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87
Dominica	68-79	80, 81, 82, 83, 84, 85, 86, 87
Dominican Republic	31-87	-
Ecuador	31-76, 77 (C171, R177, R178), 78, 79 (R180), 80 (R181), 81, 82 (R183), 83-87	77 (C170, P089), 79 (C173), 80 (C174), 82 (C176, P081)
Egypt	31-87	-
El Salvador	31-61, 63 (C149), 64 (C150), 67 (C155, C156, R164, R165), 69 (C159, R168), 71-81, 87	62, 63 (C148, R156, R157), 64 (C151, R158, R159), 65, 66, 67 (C154, R163), 68, 69 (R167), 70, 82, 83, 84, 85, 86
Equatorial Guinea	67-79, 84	80, 81, 82, 83, 85, 86, 87

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State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Eritrea	80	81, 82, 83, 84, 85, 86, 87
Estonia	79-86	87
Ethiopia	31-87	–
Fiji	59-82	83, 84, 85, 86, 87
Finland	31-87	–
France	31-83	84, 85, 86, 87
Gabon	45-72, 75-81	74, 82, 83, 84, 85, 86, 87
Gambia	–	82, 83, 84, 85, 86, 87
Georgia	86	80, 81, 82, 83, 84, 85, 87
Germany	34-74, 75 (C167, R175), 76, 80-87	75 (C168, R176), 77, 78, 79
Ghana	40-79, 83 (C177), 84 (C178, C179, C180), 85 (C181), 86-87	80, 81, 82, 83 (R184), 84 (P147, R185, R186, R187), 85 (R188)
Greece	31-86	87
Grenada	66-80	81, 82, 83, 84, 85, 86, 87
Guatemala	31-72, 75 (C167, R175), 76, 78 (R179), 79, 80 (R181), 81 (R182), 82-83, 84 (C179), 85 (C181)	74, 75 (C168, R176), 77, 78 (C172), 80 (C174), 81 (C175), 84 (C178, C180, P147, R185, R186, R187), 85 (R188), 86, 87
Guinea	43-83	84, 85, 86, 87
Guinea-Bissau	63-78	79, 80, 81, 82, 83, 84, 85, 86, 87
Guyana	50-85, 87	86
Haiti	31-66, 67 (C156, R165), 69-74, 75 (C167)	67 (C154, C155, R163, R164), 68, 75 (C168, R175, R176), 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Honduras	39-66, 68-69, 71-72, 74 (C164, C165, C166, R174), 75 (C167), 76	67, 70, 74 (C163, R173), 75 (C168, R175, R176), 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Hungary	31-87	–
Iceland	31-87	–
India	31-77, 83-84, 86	78, 79, 80, 81, 82, 85, 87
Indonesia	33-87	–

Submission to competent authorities

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Islamic Republic of Iran	31-83, 85	84, 86, 87
Iraq	31-84, 85 (C181), 86-87	85 (R188)
Ireland	31-87	–
Israel	32-85	86, 87
Italy	31-87	–
Jamaica	47-87	–
Japan	35-87	–
Jordan	39-87	–
Kazakhstan	–	80, 81, 82, 83, 84, 85, 86, 87
Kenya	48-80	81, 82, 83, 84, 85, 86, 87
Republic of Korea	79-87	–
Kuwait	45-76, 78-79, 80 (C174), 81-85, 87	77, 80 (R181), 86
Kyrgyzstan	–	79, 80, 81, 82, 83, 84, 85, 86, 87
Lao People's Democratic Republic	48-81	82, 83, 84, 85, 86, 87
Latvia	80	79, 81, 82, 83, 84, 85, 86, 87
Lebanon	31 (C088, C089, C090, R083), 32-86	31 (C087), 87
Lesotho	51-81	82, 83, 84, 85, 86, 87
Liberia	31-76, 77 (C170, C171, R177, R178), 78-81, 82 (C176, R183), 83, 84 (C178, C179, C180, R185, R186, R187), 85-86	77 (P089), 82 (P081), 84 (P147), 87
Libyan Arab Jamahiriya	35-82, 87	83, 84, 85, 86
Lithuania	79-87	–
Luxembourg	31-87	–
Madagascar	45-54, 56, 58-68, 69 (C159, R168), 70, 79	55, 69 (R167), 71, 72, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87
Malawi	49-81, 87	82, 83, 84, 85, 86

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State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Malaysia	41-76, 77 (C170; C171; R177; R178), 78-83, 85-87	77 (P089), 84
Mali	44-78, 87	79, 80, 81, 82, 83, 84, 85, 86
Malta	49-82, 84 (C178; C179; C180; P147)	83, 84 (R185; R186; R187), 85, 86, 87
Mauritania	45-80	81, 82, 83, 84, 85, 86, 87
Mauritius	53-87	—
Mexico	31-83, 85, 87	84, 86
Republic of Moldova	79-83, 85-87	84
Mongolia	52-81, 87	82, 83, 84, 85, 86
Morocco	39-79, 81, 82 (C176; R183), 83-86	80, 82 (P081), 87
Mozambique	61-82	83, 84, 85, 86, 87
Myanmar	31-86	87
Namibia	78-87	—
Nepal	51-81, 83, 85, 87	82, 84, 86
Netherlands	31-85, 87	86
New Zealand	31-86	87
Nicaragua	40-87	—
Niger	45-82, 87	83, 84, 85, 86
Nigeria	45-79, 81-82	80, 83, 84, 85, 86, 87
Norway	31-87	—
Oman	81-83	84, 85, 86, 87
Pakistan	31-80	81, 82, 83, 84, 85, 86, 87
Panama	31-87	—
Papua New Guinea	61-87	—
Paraguay	40-84, 87	85, 86
Peru	31-83, 86	84, 85, 87
Philippines	31-83, 84 (C179; R186), 86	84 (C173; C180; P147; R185; R187), 85, 87
Poland	31-87	—

Submission to competent authorities

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Portugal	31-87	—
Qatar	58-87	—
Romania	39-87	—
Russian Federation	37-87	—
Rwanda	47-79, 81, 87	80, 82, 83, 84, 85, 86
Saint Kitts and Nevis	87	83, 84, 85, 86
Saint Lucia	67 (C154, R163), 68 (C158, R166), 87	66, 67 (C155, C156, R164, R165), 68 (C157, P110), 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86
Saint Vincent and the Grenadines	86	82, 83, 84, 85, 87
San Marino	69-87	—
Sao Tome and Principe	68-76	77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Saudi Arabia	61-87	—
Senegal	44-78, 87	79, 80, 81, 82, 83, 84, 85, 86
Seychelles	63 (C148, R156), 64, 87	63 (C149, R157), 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86
Sierra Leone	45-61, 62 (C145, C147, R153, R155)	62 (C146, R154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Singapore	50-85	86, 87
Slovakia	80-83, 86-87	84, 85
Slovenia	79-83, 84 (C179), 87	84 (C178, C180, P147, R185, R186, R187), 85, 86
Solomon Islands	74	70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Somalia	45-75	76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
South Africa	31-82, 87	83, 84, 85, 86
Spain	39-62, 63 (C148, R156), 64-74, 75 (C167, R175), 76-79, 82, 85, 87	63 (C149, R157), 75 (C168, R176), 80, 81, 83, 84, 86

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State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Sri Lanka	31-87	–
Sudan	39-80, 87	81, 82, 83, 84, 85, 86
Suriname	61-80	81, 82, 83, 84, 85, 86, 87
Swaziland	60-81, 82 (C176; R183), 83	82 (P081), 84, 85, 86, 87
Sweden	31-84	85, 86, 87
Switzerland	31-87	–
Syrian Arab Republic	31-65, 67-69, 71-76	66, 70, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87
Tajikistan	81-83	84, 85, 86, 87
United Republic of Tanzania	46-65, 67 (C154; R163), 69-71, 76, 77 (C170; R177), 82 (P081)	66, 67 (C155; C156; R164; R165), 68, 72, 74, 75, 77 (C171; P089; R178), 78, 79, 80, 81, 82 (C176; R183), 83, 84, 85, 86, 87
Thailand	31-82	83, 84, 85, 86, 87
The former Yugoslav Republic of Macedonia	80-82	83, 84, 85, 86, 87
Togo	44-85, 87	86
Trinidad and Tobago	47-85	86, 87
Tunisia	39-87	–
Turkey	31-87	–
Turkmenistan	–	81, 82, 83, 84, 85, 86, 87
Uganda	47-80	81, 82, 83, 84, 85, 86, 87
Ukraine	37-87	–
United Arab Emirates	58-86	87
United Kingdom	31-87	–
United States	31-87	–
Uruguay	31-79, 81, 82 (P081), 84, 87	80, 82 (C176; R183), 83, 85, 86
Uzbekistan	–	80, 81, 82, 83, 84, 85, 86, 87

Submission to competent authorities

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Venezuela	31-70, 71 (C160; R170; R171), 72, 74 (R173), 75 (C167; R175), 76, 77 (C170; R177), 78 (R179), 80, 82 (C176; R183)	71 (C161), 74 (C163; C164; C165; C166; R174), 75 (C168; R176), 77 (C171; P089; R178), 78 (C172), 79, 81, 82 (P081), 83, 84, 85, 86, 87
Viet Nam	33-87	-
Yemen	49-76, 77 (C170; C171; R177; R178), 78-81, 82 (C176; R183), 83, 84 (C178; C179; C180; R185; R186; R187), 85-87	77 (P089), 82 (P081), 84 (P147)
Zambia	49-82	83, 84, 85, 86, 87
Zimbabwe	66-83, 84 (C178; C179; P147; R185; R186), 85-87	84 (C180; R187)

**Appendix II. Overall position of member States
as of 8 December 2000**

Sessions at which decisions were adopted	Number of States in which, according to information supplied by the government:			Number of States which were Members of the Organization at the time of the session
	all the texts have been submitted	some of these texts have been submitted	none of these texts have been submitted (including cases in which no information has been supplied by the government)	
31 (June 1948)	59	1		60
32 (June 1949)	61			61
33 (June 1950)	63			63
34 (June 1951)	64			64
35 (June 1952)	66			66
36 (June 1953)	66			66
37 (June 1954)	69			69
38 (June 1955)	69			69
39 (June 1956)	76			76
40 (June 1957)	79			79
41 (April 1958)	80			80
42 (June 1958)	80			80
43 (June 1959)	81			81
44 (June 1960)	85			85
45 (June 1961)	101			101
46 (June 1962)	102			102
47 (June 1963)	108			108
48 (June 1964)	110			110
49 (June 1965)	114			114
50 (June 1966)	115			115
51 (June 1967)	116	1		117

Submission to competent authorities

Sessions at which decisions were adopted	Number of States in which, according to information supplied by the government:			Number of States which were Members of the Organization at the time of the session
	all the texts have been submitted	some of these texts have been submitted	none of these texts have been submitted (including cases in which no information has been supplied by the government)	
52 (June 1968)	117	— *	1	118
53 (June 1969)	120	1		121
54 (June 1970)	119	1		120
55 (October 1970)	117	1	2	120
56 (June 1971)	120			120
58 (June 1973)	121	2		123
59 (June 1974)	124		1	125
60 (June 1975)	124	1	1	126
61 (June 1976)	130		1	131
62 (October 1976)	127	1	3	131
63 (June 1977)	127	5	2	134
64 (June 1978)	131	3	1	135
65 (June 1979)	133		4	137
66 (June 1980)	133	— *	8	142
67 (June 1981)	132	6	4	143
68 (June 1982)	136	3	7	147
69 (June 1983)	138	3	7	148
70 (June 1984)	137	— *	12	149
71 (June 1985)	138	2	9	149
72 (June 1986)	139		10	149
74 (September 1987)	135	2	12	149
75 (June 1988)	129	8	12	149
76 (June 1989)	132		15	147
77 (June 1990)	119	7	21	147

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Sessions at which decisions were adopted	Number of States in which, according to information supplied by the government:			Number of States which were Members of the Organization at the time of the session
	all the texts have been submitted	some of these texts have been submitted	none of these texts have been submitted (including cases in which no information has been supplied by the government)	
78 (June 1991)	121	4	24	149
79 (June 1992)	122	4	30	156
80 (June 1993)	121	3	43	167
81 (June 1994)	116	2	51	171
82 (June 1995)	102	11	60	173
83 (June 1996)	94	2	78	174
84 (October 1996)	76	10	88	174
85 (June 1997)	79	5	90	174
86 (June 1998)	74	- *	100	174
87 (June 1999)	89		85	174

* At this session the Conference adopted one Recommendation only.

Appendix III. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities¹

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions, the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution, a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification. In this connection, the summarized information appears in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains information relating to the submission to the competent authorities of the instruments adopted by the Conference at its 86th (June 1998) and 87th (June 1999) Sessions. The period of 12 months provided for the submission to the competent authorities of the Recommendation adopted at the 86th Session expired on 18 June 1999, and the period of 18 months on 18 December 1999.

The period of 12 months provided for the submission to the competent authorities of the instruments on the worst forms of child labour adopted at the 87th Session expired on 17 June 2000, and the period of 18 months will expire on 17 December 2000.

This summarized information consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 88th Session of the Conference (Geneva, May-June 2000) and which could not, therefore, be laid before the Conference at that session.

Argentina. The instruments adopted at the 87th Session of the Conference were submitted to the National Congress on 23 August 1999.

Australia. The instruments adopted at the 85th and 86th Sessions of the Conference were submitted to the House of Representatives and the Senate of the Parliament of the Commonwealth of Australia on 8 December 1999.

¹ The summary relates to the instruments adopted at the following sessions of the Conference:

86th Session (1998)

Job Creation in Small and Medium-Sized Enterprises Recommendation (No. 189)

87th Session (1999)

Worst Forms of Child Labour Convention (No. 182)

Worst Forms of Child Labour Recommendation (No. 190)

Azerbaijan. The instruments adopted at the 86th and 86th Sessions of the Conference have been submitted to the National Assembly, the Milli Mejlis.

Bahrain. The instruments adopted at the 87th Session of the Conference were submitted to a competent authority on 3 October 1999.

Barbados. The ratification of Convention No. 182 was registered on 23 October 2000.

Belarus. The ratification of Convention No. 182 was registered on 31 October 2000.

Belgium. The instruments adopted at the 86th and 87th Sessions of the Conference were transmitted to the House of Representatives and the Senate in November and December 1999.

Belize. The ratification of Convention No. 182 was registered on 6 March 2000.

Benin. By Decree No. 2000-372 of 3 August 2000, the Government requested authorization from the National Assembly to ratify Convention No. 182.

Botswana. The ratification of Convention No. 182 was registered on 3 January 2000.

Brazil. The ratification of Convention No. 182 was registered on 2 February 2000.

Bulgaria. The ratification of Convention No. 182 was registered on 28 July 2000.

Canada. The ratification of Convention No. 182 was registered on 6 June 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to the House of Commons and the Senate on 2 and 6 June 2000, respectively.

Central African Republic. The ratification of Convention No. 182 was registered on 28 June 2000.

Chad. The ratification of Convention No. 182 was registered on 6 November 2000.

Chile. The ratification of Convention No. 182 was registered on 17 July 2000.

China. The instruments adopted at the 87th Session of the Conference were submitted to the State Council and to the Permanent Commission of the National People's Congress on 5 April 2000.

Costa Rica. The instruments adopted at the 86th and 87th Sessions of the Conference were submitted to the Legislative Assembly in September 2000.

Cyprus. The ratification of Convention No. 182 was registered on 27 November 2000.

Czech Republic. The instruments adopted at the 87th Session of the Conference were submitted to the Parliament in September 2000.

Denmark. The ratification of Convention No. 182 was registered on 14 August 2000.

Dominican Republic. The ratification of Convention No. 182 was registered on 15 November 2000.

Ecuador. The ratification of Convention No. 182 was registered on 19 September 2000.

Egypt. The instruments adopted at the 87th Session of the Conference were submitted to the People's Assembly on 19 October 1999.

Submission to competent authorities

El Salvador. The ratification of Convention No. 182 was registered on 12 October 2000.

Ethiopia. The instruments adopted at the 87th Session of the Conference were submitted to the House of People's Representatives on 16 May 2000.

Finland. The ratification of Convention No. 182 was registered on 17 January 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to the Parliament on 23 December 1999.

Germany. The instruments adopted at the 86th and 87th Sessions of the Conference were submitted to the Bundestag and Bundesrat on 28 February 2000.

Ghana. The ratification of Convention No. 182 was registered on 13 June 2000.

Greece. The Recommendation adopted at the 86th Session of the Conference was submitted to the Chamber of Deputies on 20 October 1999.

Guyana. Parliament approved the ratification of Convention No. 182 on 18 September 2000.

Hungary. The ratification of Convention No. 182 was registered on 20 April 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to the Parliament on 2 December 1999.

Iceland. The ratification of Convention No. 182 was registered on 29 May 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to the Parliament on 11 May 1999.

India. The Recommendation adopted at the 86th Session of the Conference was submitted to the House of the People and the Council of States of the Parliament of India on 19 and 20 April 2000.

Indonesia. The ratification of Convention No. 182 was registered on 28 March 2000.

Iraq. The instruments adopted at the 87th Session of the Conference have been submitted to a competent authority.

Ireland. The ratification of Convention No. 182 was registered on 20 December 1999.

Italy. The ratification of Convention No. 182 was registered on 7 June 2000.

Jamaica. The instruments adopted at the 87th Session of the Conference were submitted to the Parliament in March 2000.

Japan. The instruments adopted at the 87th Session of the Conference were submitted to the Diet on 16 May 2000.

Jordan. The ratification of Convention No. 182 was registered on 20 April 2000.

Republic of Korea. The instruments adopted at the 87th Session of the Conference were submitted to the National Assembly on 7 June 2000.

Kuwait. The ratification of Convention No. 182 was registered on 15 August 2000.

Libyan Arab Jamahiriya. The ratification of Convention No. 182 was registered on 4 October 2000.

Lithuania. The instruments adopted at the 86th and 87th Sessions of the Conference were submitted to the Seimas on 4 May 2000.

Luxembourg. The instruments adopted at the 87th Session of the Conference were submitted to the Chamber of Deputies on 28 October 1999.

Malawi. The ratification of Convention No. 182 was registered on 19 November 1999.

Malaysia. The ratification of Convention No. 182 was registered on 10 November 2000.

Mali. The ratification of Convention No. 182 was registered on 14 July 2000.

Mauritius. The ratification of Convention No. 182 was registered on 7 June 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to the National Assembly on 30 November 1999.

Mexico. The ratification of Convention No. 182 was registered on 30 June 2000.

Republic of Moldova. The instruments adopted at the 87th Session of the Conference were submitted to the Parliament on 21 August 2000.

Mongolia. Parliament approved the ratification of Convention No. 182 on 6 October 2000.

Namibia. The ratification of Convention No. 182 was registered on 15 November 2000. The recommendation adopted at the 86th Session of the Conference has been submitted to the National Assembly.

Nepal. The instruments adopted at the 87th Session of the Conference have been submitted to the House of Representatives.

Netherlands. The instruments adopted at the 87th Session of the Conference were submitted to Parliament on 8 May 2000.

Nicaragua. The ratification of Convention No. 182 was registered on 6 November 2000.

Niger. The ratification of Convention No. 182 was registered on 23 October 2000.

Norway. The instruments adopted at the 87th Session of the Conference were submitted to the Parliament on 12 May 2000.

Panama. The ratification of Convention No. 182 was registered on 31 October 2000.

Papua New Guinea. The ratification of Convention No. 182 was registered on 2 June 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to the Parliament on 12 April 2000.

Paraguay. The instruments adopted at the 87th Session of the Conference were submitted to the National Congress on 26 May 2000.

Philippines. The ratification of Convention No. 182 was registered on 28 November 2000.

Poland. The instruments adopted at the 87th Session of the Conference were submitted to the Sejm on 30 September 1999.

Portugal. The ratification of Convention No. 182 was registered on 15 June 2000.

Qatar. The ratification of Convention No. 182 was registered on 30 May 2000. The Recommendation adopted at the 86th Session of the Conference has been submitted to a competent authority.

Submission to competent authorities

Romania. The instruments adopted at the 87th Session of the Conference were submitted to the House of Deputies and the Senate on 15 February 2000.

Russian Federation. The instruments adopted at the 87th Session of the Conference were submitted to the State Duma of the Federal Assembly on 24 May 2000.

Rwanda. The ratification of Convention No. 182 was registered on 23 May 2000.

Saint Kitts and Nevis. The ratification of Convention No. 182 was registered on 12 October 2000.

Saint Lucia. The ratification of Convention No. 182 was registered on 6 December 2000.

San Marino. The ratification of Convention No. 182 was registered on 15 March 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to the Great and General Council on 28 October 1999.

Saudi Arabia. The instruments adopted at the 87th Session of the Conference were submitted to a competent authority on 29 December 1999.

Senegal. The ratification of Convention No. 182 was registered on 1 June 2000.

Seychelles. The ratification of Convention No. 182 was registered on 28 September 1999.

Slovakia. The ratification of Convention No. 182 was registered on 20 December 1999.

Slovenia. The International Relations Committee of the Parliament has discussed the ratification of Convention No. 182.

Spain. The Government submitted Convention No. 182 to the *Cortes* for ratification.

South Africa. The ratification of Convention No. 182 was registered on 7 June 2000.

Sri Lanka. The instruments adopted from the 84th to the 87th Sessions of the Conference were submitted to the Parliament on 4 July 2000.

Sudan. The instruments adopted at the 87th Session of the Conference have been submitted to the competent authority.

Switzerland. The ratification of Convention No. 182 was registered on 28 June 2000.

Togo. The ratification of Convention No. 182 was registered on 19 September 2000.

Tunisia. The ratification of Convention No. 182 was registered on 28 February 2000.

Turkey. The instruments adopted at the 87th Session of the Conference were submitted to the Grand National Assembly on 26 December 1999.

Ukraine. The Social Policy and Labour Commission of the Parliament approved the ratification of Convention No. 182 on 5 September 2000.

United Kingdom. The ratification of Convention No. 182 was registered on 22 March 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to Parliament in December 1999.

United States. The ratification of Convention No. 182 was registered on 2 December 1999.

Uruguay. The Executive Branch submitted Convention No. 182 for ratification to the Legislative Branch.

Viet Nam. The instruments adopted at the 87th Session of the Conference were submitted to the National Assembly on 29 October 1999.

Yemen. The ratification of Convention No. 182 was registered on 15 June 2000. The Recommendation adopted at the 86th Session of the Conference was submitted to the House of Representatives on 28 July 2000.

Zimbabwe. On 14 September 2000, the Parliament approved the ratification of Convention No. 182.

The Committee has deemed it necessary in certain cases to request additional information on the nature of the competent authorities to which instruments adopted by the International Labour Conference are submitted.

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